State Administration Council

Tuesday, April 11, 2006
1:00 PM – 3:00 PM
MORRIS HALL (17 HOB)

Allan G. Bense
Speaker

Donald "Don" Brown
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

State Administration Council

Start Date and Time:	Tuesday, April 11, 2006 01:00 pm
End Date and Time:	Tuesday, April 11, 2006 03:00 pm
Location:	Morris Hall (17 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 453 Designation of an Official State Pie of the State of Florida by Needelman
HB 581 Public Benefits by Cretul
HB 605 CS Public Records by Planas
HB 639 Building Designations by Kyle
HB 737 CS Tax Benefits Related to Catastrophic Emergencies by Grant
HB 773 CS Initiative Procedures and Standards by Goodlette
HB 1007 CS State Parks by Proctor
HCB 6001 CS Per Diem and Travel Expenses by Governmental Operations Committee, Coley, Ausley
HB 7145 CS Seaport Security by Domestic Security Committee
HB 7209 Review under the Open Government Sunset Review Act regarding the Total Maximum Daily Load Program for State Waters by Governmental Operations Committee

NOTICE FINALIZED on 04/07/2006 15:57 by ELLINOR.MARTHA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 453 Designation of an Official State Pie of the State of Florida
SPONSOR(S): Needelman and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	7 Y, 0 N	Ziegler	Williamson
2) Tourism Committee	7 Y, 0 N	Langston	McDonald
3) State Administration Council		Ziegler CZ	Bussey
4)			
5)			

SUMMARY ANALYSIS

Current law provides 32 state designations such as the state beverage, the state shell, and the state butterfly. Florida does not, however, have a designation for a state pie. HB 453 designates the Key Lime Pie as the official state pie.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 15, F.S., designates official state emblems. It contains 32 state designations. Examples include the state beverage, state shell, state stone, and state butterfly.[1] Current law does not contain a designation for the state pie. In 1994, House Resolution 2485 was adopted. It recognized the Key Lime Pie as an important symbol of Florida.

Proposed Changes

The bill designates the Key Lime Pie as the official state pie of Florida.

C. SECTION DIRECTORY:

Section 1 creates s. 15.0321, F.S., to designate the Key Lime Pie as the official state pie of Florida.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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[1] These include the state: flag, seal, tree, fruit, beverage, citrus archive, shell, stone, gem, wildflower, play, animal, freshwater fish, saltwater fish, marine mammal, saltwater mammal, butterfly, reptile, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera program, renaissance festival, railroad museums, transportation museums, soil, fiddle contest, band, and Sports Hall of Fame.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – Past Legislation
In 1988, HB 245, which designated the Key Lime Pie as the official state pie, passed the House by a vote of 107 to three; however, the bill died in the Senate.

Other Comments – Other States
Vermont is the only state with a designation for a state pie. Georgia adopted a resolution in 1996 that designated "Mattie's Bistro and Bakery's pecan pie" as the official pie;[2] however, to date, Georgia has not designated the pecan pie as the official state pie.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[2] House Resolution 1137, Georgia House of Representatives. 1996.

A bill to be entitled

An act relating to the designation of an official state pie of the State of Florida; creating s. 15.0321, F.S.; designating the Key Lime Pie as the official state pie; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 15.0321, Florida Statutes, is created to read:

15.0321 Official state pie.--The Key Lime Pie is designated as the official state pie of Florida.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 581 Public Benefits
SPONSOR(S): Cretul and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1796

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N	Brown	Williamson
2) Fiscal Council	17 Y, 5 N	Dobbs	Kelly
3) State Administration Council		Brown	Bussey
4)			
5)			

SUMMARY ANALYSIS

The bill prohibits the use of state funds, under the state employee benefits program, for any program providing benefits for any individuals other than enrollees and the spouses and dependent children of enrollees. The bill applies this prohibition to employee benefits programs established by the community college board of trustees and by the state university board of trustees.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates a prohibition on certain state insurance premium contributions from state employers.

B. EFFECT OF PROPOSED CHANGES:

Background: State Employee Health Care

Chapter 110, F.S., provides the statutory authority for the implementation of health insurance and prescription drug coverage for all enrollees. Enrollees include all state officers and employees, retired state officers and employees, surviving spouses of deceased state officers and employees, as well as all state university officers and employees, retired state university officers and employees, and surviving spouses of deceased state university officers and employees.[1]

Enrollees may choose between a self-insured indemnity plan called a preferred provider organization (PPO) or an approved health management organization (HMO). Sections 110.123 and 110.12315, F.S., describe the coverage available and specify the minimum complement of benefits each approved provider must offer. An enrollee may select health insurance coverage from a number of approved provider organizations. The state-sponsored preferred provider organization provides universal access in all of Florida's 67 counties. As an alternative, the enrollee may choose to enroll in one of several managed care plans offered by participating HMOs pre-approved by the Division of State Group Insurance in the Department of Management Services. In counties not served by an HMO, this option is unavailable to enrollees.

The Department of Management Services has authority to establish a comprehensive package of insurance benefits that may include supplemental insurance products. Supplemental insurance is designed to provide coverage for certain treatments that are not included in a health insurance policy, or to provide additional benefits to those already offered in a health insurance policy. The State currently offers active employees the opportunity to purchase from private insurers various supplemental insurance plans and to have the premium payments for such plans deducted from the employee's pay on a pre-tax basis. Unlike the State sponsored PPO or HMO plans, the State does not contribute to any portion of the premium for supplemental insurance. Some of the various supplemental insurance products available to enrollees include vision insurance, dental insurance, supplemental hospitalization insurance, cancer and cancer/intensive care insurance, and accident and accident disability insurance.

Effect of Proposed Legislation

The bill addresses the state's participation in funding benefits programs under the state's insurance programs. The bill prohibits the use of state funds when a benefit is provided "for any individuals other than enrollees and the spouses and dependent children of enrollees." According to the Division of State Group Insurance, the bill "has no impact on Department of Management Services or the State Group Insurance Program as currently administered by the Division of State Group Insurance in accordance with *Florida Statutes* and *Florida Administrative Code*."[2]

The bill applies the same restrictions on the use of state funds for employee benefits programs established by the community college board of trustees and by the state university board of trustees.

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[1] Sec. 110.123(2)(b), F.S.

[2] Department of Management Services, 2006 Substantive Bill Analysis HB 581, February 7, 2006.

There are existing employee benefits programs at some community colleges and state universities which will be subject to this restriction. It is unknown at this time how many of these programs are using state funds.

C. SECTION DIRECTORY:

Section 1 amends s. 110.123, F.S., to prohibit the use of state funds to provide a benefit for anyone other than an enrollee or the spouse or dependent of an enrollee.

Section 2 amends s. 1001.64, F.S., to prohibit the community college board of trustees from the use of state funds to provide a benefit for anyone other than an enrollee or the spouse or dependent of an enrollee.

Section 3 amends s. 1001.74, F.S., to prohibit the state university board of trustees from the use of state funds to provide a benefit for anyone other than an enrollee or the spouse or dependent of an enrollee.

Section 4 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a state expenditure. The bill reduces potential expenditures related to employee benefits.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill reduces potential expenditures related to employee benefits. It is unknown whether or not any local governments currently maintain benefits programs that would be impacted by this legislation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to public benefits; amending s. 110.123, F.S., relating to the state group insurance program; prohibiting funding for benefits granted under the program from being used to provide benefits for any individuals other than enrollees and the spouses and dependent children of enrollees; amending s. 1001.64, F.S.; prohibiting community college boards of trustees from establishing benefits programs that use state funding to provide benefits for any individuals other than enrollees and the spouses and dependent children of enrollees; amending s. 1001.74, F.S.; prohibiting university boards of trustees from establishing benefits programs that use state funding to provide benefits for any individuals other than enrollees and the spouses and dependent children of enrollees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (13) is added to section 110.123, Florida Statutes, to read:

110.123 State group insurance program.--

(13) CERTAIN BENEFITS PROHIBITED.--No state funding for benefits granted under this section shall be used to provide benefits for any individuals other than enrollees and the spouses and dependent children of enrollees.

Section 2. Subsection (18) of section 1001.64, Florida Statutes, is amended to read:

1001.64 Community college boards of trustees; powers and duties.--

(18) Each board of trustees shall establish the personnel program for all employees of the community college, including the president, pursuant to the provisions of chapter 1012 and rules and guidelines of the State Board of Education, including: compensation and other conditions of employment; recruitment and selection; nonreappointment; standards for performance and conduct; evaluation; benefits and hours of work; leave policies; recognition; inventions and work products; travel; learning opportunities; exchange programs; academic freedom and responsibility; promotion; assignment; demotion; transfer; ethical obligations and conflict of interest; restrictive covenants; disciplinary actions; complaints; appeals and grievance procedures; and separation and termination from employment. The boards of trustees are prohibited from establishing benefits programs that use state funding to provide benefits for any individuals other than enrollees and the spouses and dependent children of enrollees.

Section 3. Subsection (19) of section 1001.74, Florida Statutes, is amended to read:

1001.74 Powers and duties of university boards of trustees.--

(19) Each board of trustees shall establish the personnel program for all employees of the university, including the president, pursuant to the provisions of chapter 1012 and, in accordance with rules and guidelines of the State Board of Education, including: compensation and other conditions of

employment, recruitment and selection, nonreappointment, standards for performance and conduct, evaluation, benefits and hours of work, leave policies, recognition and awards, inventions and works, travel, learning opportunities, exchange programs, academic freedom and responsibility, promotion, assignment, demotion, transfer, tenure and permanent status, ethical obligations and conflicts of interest, restrictive covenants, disciplinary actions, complaints, appeals and grievance procedures, and separation and termination from employment. The boards of trustees are prohibited from establishing benefits programs that use state funding to provide benefits for any individuals other than enrollees and the spouses and dependent children of enrollees. The Department of Management Services shall retain authority over state university employees for programs established in ss. 110.123, 110.161, 110.1232, 110.1234, and 110.1238 and in chapters 121, 122, and 238.

Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 605 CS Public Records
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	7 Y, 0 N, w/CS	Williamson	Williamson
2) Juvenile Justice Committee	5 Y, 0 N, w/CS	White	White
3) State Administration Council		Williamson	Bussey
4)			
5)			

SUMMARY ANALYSIS

The bill creates a public records exemption for certain identification and location information for current or former Department of Juvenile Justice (DJJ) personnel. It also creates a public records exemption for certain identification and location information regarding the spouse and children of DJJ personnel.

This bill provides for future review and repeal of the exemption and provides a statement of public necessity.

The bill does not grant rule-making authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law provides a number of public records exemptions for certain identifying and location information regarding police officers, child protective service investigators, firefighters, judges, and attorneys.[1] The exemptions also protect identifying and location information regarding the spouses and children of such employees.[2] There is, however, no such exemption for employees of juvenile facilities.

Effect of Bill

The bill creates a public records exemption for current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice (DJJ personnel). The following information is made exempt[3] from public records requirements:

- Home addresses, telephone numbers, and photographs of DJJ personnel;
- Names, home addresses, telephone numbers, and places of employment of the spouse and children of DJJ personnel; and
- Names and locations of schools and day care facilities attended by the children of DJJ personnel.

This bill provides for future review and repeal of the exemption on October 2, 2011, pursuant to the Open Government Sunset Review Act.[4] It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to create a public records exemption for DJJ personnel.

Section 2 reenacts s. 409.2577, F.S., to incorporate the amendment made to s. 119.071, F.S.

Section 3 provides a public necessity statement.

Section 4 provides an October 1, 2006, effective date.

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[1] Section 119.071(4)(d), F.S.

[2] *Id.*

[3] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

[4] Section 119.15, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See "FISCAL COMMENTS."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See "FISCAL COMMENTS."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt DJJ personnel information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   Vote Requirement
   Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

   Public Necessity Statement
   Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[5] provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Governmental Operations Committee

On March 22, 2006, the Governmental Operations Committee adopted an amendment and reported the bill favorably with committee substitute. The amendment:

- Removed the duplicative exemption for social security numbers.
- Removed the exemption for the photograph of a spouse or child of DJJ personnel, because it was unclear whether the photographs were collected by the employer.
- Conformed the public necessity statement to the exemption.

Juvenile Justice Committee

On April 4, 2006, the Juvenile Justice Committee adopted an amendment and reported the bill favorably with committee substitute. The amendment:

- Added the title of social services supervisor to the list of DJJ personnel subject to the exemption.
- Removed the bill's requirement that, prior to application of the exemption, DJJ personnel have provided written statements indicating they made reasonable efforts to protect their personal information from public access via other sources.

[5] Section 119.15, F.S.

CHAMBER ACTION

The Juvenile Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for the home addresses, telephone numbers, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice, the names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel, and the names and locations of schools and day care facilities attended by the children of such personnel; providing for review and repeal; reenacting s. 409.2577, F.S., relating to

disclosure of information to the parent locator service of the Department of Children and Family Services, for the purpose of incorporating the amendment to s. 119.071, F.S., in a reference thereto; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.--

(4) AGENCY PERSONNEL INFORMATION.--

(d)1. The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt

from s. 119.07(1). The home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1). The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from s. 119.07(1). The home addresses, telephone numbers, social security numbers, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. The home addresses, telephone numbers, social security numbers, and photographs of current or former human resource,

labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

3. The home addresses, telephone numbers, social security numbers, and photographs of current or former United States attorneys and assistant United States attorneys; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former United States attorneys and assistant United States attorneys; and the names and locations of schools and day care facilities attended by the children of current or former United States attorneys and assistant United States attorneys are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

4. The home addresses, telephone numbers, social security numbers, and photographs of current or former judges of United States Courts of Appeal, United States district judges, and United States magistrate judges; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former judges of United States Courts of Appeal, United States district judges, and United States magistrate judges; and the names and locations of schools and day care facilities attended by the children of current or former judges of United States Courts of Appeal, United States district judges, and United States magistrate judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

5. The home addresses, telephone numbers, social security numbers, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2006,

unless reviewed and saved from repeal through reenactment by the Legislature.

6. The home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, as defined in s. 39.820, and the names, home addresses, telephone numbers, and places of employment of the spouses and children of such persons, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

7. The home addresses, telephone numbers, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice, the names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel, and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of

the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

8.~~7.~~ An agency that is the custodian of the personal information specified in subparagraph 1., subparagraph 2., subparagraph 3., subparagraph 4., subparagraph 5., ~~or~~ subparagraph 6., or subparagraph 7. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 1., subparagraph 2., subparagraph 3., subparagraph 4., subparagraph 5., ~~or~~ subparagraph 6., or subparagraph 7. shall maintain the exempt status of the personal information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

Section 2. For the purpose of incorporating the amendment made by this act to section 119.071, Florida Statutes, in a reference thereto, section 409.2577, Florida Statutes, is reenacted to read:

409.2577 Parent locator service.--The department shall establish a parent locator service to assist in locating parents who have deserted their children and other persons liable for support of dependent children. The department shall use all sources of information available, including the Federal Parent Locator Service, and may request and shall receive information from the records of any person or the state or any of its political subdivisions or any officer thereof. Any agency as

defined in s. 120.52, any political subdivision, and any other person shall, upon request, provide the department any information relating to location, salary, insurance, social security, income tax, and employment history necessary to locate parents who owe or potentially owe a duty of support pursuant to Title IV-D of the Social Security Act. This provision shall expressly take precedence over any other statutory nondisclosure provision which limits the ability of an agency to disclose such information, except that law enforcement information as provided in s. 119.071(4)(d) is not required to be disclosed, and except that confidential taxpayer information possessed by the Department of Revenue shall be disclosed only to the extent authorized in s. 213.053(15). Nothing in this section requires the disclosure of information if such disclosure is prohibited by federal law. Information gathered or used by the parent locator service is confidential and exempt from the provisions of s. 119.07(1). Additionally, the department is authorized to collect any additional information directly bearing on the identity and whereabouts of a person owing or asserted to be owing an obligation of support for a dependent child. The department shall, upon request, make information available only to public officials and agencies of this state; political subdivisions of this state, including any agency thereof providing child support enforcement services to non-Title IV-D clients; the custodial parent, legal guardian, attorney, or agent of the child; and other states seeking to locate parents who have deserted their children and other persons liable for support of dependents, for the sole purpose of establishing,

modifying, or enforcing their liability for support, and shall make such information available to the Department of Children and Family Services for the purpose of diligent search activities pursuant to chapter 39. If the department has reasonable evidence of domestic violence or child abuse and the disclosure of information could be harmful to the custodial parent or the child of such parent, the child support program director or designee shall notify the Department of Children and Family Services and the Secretary of the United States Department of Health and Human Services of this evidence. Such evidence is sufficient grounds for the department to disapprove an application for location services.

Section 3. The Legislature finds that it is a public necessity that the home addresses, telephone numbers, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice, the names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel, and the names and locations of schools and day care facilities attended by the children of such personnel be made exempt from public records requirements. This exemption is justified because, if such information were not made exempt from public records

requirements, a juvenile probation officer, juvenile probation supervisor, detention superintendent, assistant detention superintendent, senior juvenile detention officer, juvenile detention officer supervisor, juvenile detention officer, house parent, house parent supervisor, group treatment leader, group treatment leader supervisor, rehabilitation therapist, or social services counselor of the Department of Juvenile Justice or his or her family could be harmed or threatened with harm by a juvenile defendant or by a friend or family member of a juvenile defendant.

Section 4. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 639 Building Designations
SPONSOR(S): Kyle
TIED BILLS: **IDEN./SIM. BILLS:** SB 1348

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	5 Y, 0 N	Brown	Williamson
2) State Administration Appropriations Committee	10 Y, 0 N	Dobbs	Belcher
3) State Administration Council		Brown	Bussey
4)			
5)			

SUMMARY ANALYSIS

The bill designates an office complex in Lee County as the "Joseph P. D'Allesandro Office Complex" and directs the Department of Management Services to erect suitable markers.

The Department of Management Services estimates a cost of between $5,000 and $30,000 to erect the markers. The cost would be paid from the Supervision Trust Fund base budget for operating and maintaining the state office space.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

There is an office complex located at 2295 Victoria Avenue in Ft. Myers, currently referred to as the "Ft. Myers Regional Service Center." The bill directs the Department of Management Services, which manages state employee facilities pursuant to Chapter 255, F.S., to erect markers naming the complex the "Joseph P. D'Allesandro Office Complex."

Mr. D'Allesandro is a native of Lee County and served for 33 years as the State Attorney for the 20th Judicial Circuit,[1] beginning with its inception in FY 1969-1970. He also is a member of several law enforcement, legal, and community-service associations. He is a graduate of the University of Florida and the Stetson University College of Law.

C. SECTION DIRECTORY:

Section 1 designates the "Joseph P. D'Allesandro Office Complex."

Section 2 provides a July 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Department of Management Services estimates a cost of between $5,000 to $30,000 to place "suitable markers."[2]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

[1] The circuit consists of five counties: Charlotte, Collier, Glades, Hendry, and Lee. It is the largest circuit, geographically, in the state.
[2] *2006 Substantive Bill Analysis – HB 639*, Department of Management Services, March 16 ,2006.

D. FISCAL COMMENTS:

The Department of Management Services estimates a cost of between $5,000 and $30,000 to erect the markers. The cost would be paid from the Supervision Trust Fund base budget for operating and maintaining the state office space.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to building designations; designating a building in Lee County as the Joseph P. D'Alessandro Office Complex; directing the Department of Management Services to erect suitable markers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Joseph P. D'Alessandro Office Complex designated; Department of Management Services to erect suitable markers.--

(1) The State of Florida Office Complex at 2295 Victoria Avenue in Fort Myers, Lee County, is designated as the "Joseph P. D'Alessandro Office Complex."

(2) The Department of Management Services is directed to erect suitable markers designating the Joseph P. D'Alessandro Office Complex as described in subsection (1).

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 737 CS — Tax Benefits Related to Catastrophic Emergencies
SPONSOR(S): Grant and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Domestic Security Committee	6 Y, 0 N, w/CS	Wiggins	Newton
2) Local Government Council	7 Y, 0 N	Camechis	Hamby
3) Finance & Tax Committee	6 Y, 0 N	Noriega	Diez-Arguelles
4) State Administration Council		Wiggins	Bussey
5)			

SUMMARY ANALYSIS

The bill authorizes local governments to expend proceeds from the Local Government Infrastructure Surtax to fund improvements to certain private facilities that are used as public emergency shelters or staging areas for emergency response equipment during officially declared emergencies.

The improvements eligible for funding are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner of the private facility must enter into a written contract with the local government to make the improved private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum period of 10 years after completion of the improvement.

The bill does not appear to have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain public security - The bill authorizes local governments to expend proceeds from the Local Government Infrastructure Surtax to fund improvements to certain private facilities that are used as public emergency shelters or staging areas for emergency response equipment during officially declared emergencies.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Local Government Infrastructure Surtax

Section 212.055(2), F.S., authorizes the governing authority in each county to levy a discretionary sales surtax of 0.5 percent or 1 percent, also known as the Local Government Infrastructure Surtax. The levy of the surtax must be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax. Alternatively, if the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax must be placed on the ballot and takes effect if approved by a majority of the electors of the county voting in the referendum on the surtax.

If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance, or, if the ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years. The levy of the surtax may be extended only by approval of a majority of the electors of the county voting in a referendum.

The proceeds of the surtax and any interest accrued thereto must be expended by the school district or within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct *infrastructure* and to acquire land for public recreation or conservation or protection of natural resources and to finance the closure of county-owned or municipally owned solid waste landfills that are already closed or are required to close by order of the Department of Environmental Protection. Neither the proceeds nor any interest accrued thereto may be used for operational expenses of any infrastructure, except by any county with a population of less than 75,000 that is required to close a landfill by order of the Department of Environmental Protection.

For purposes of expenditure of surtax proceeds under this section, "infrastructure" means:

- Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities which have a life expectancy of 5 or more years and any land acquisition, land improvement, design, and engineering costs related thereto;

- A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and such equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years; and

- Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities as defined in s. 29.008.

Emergency Public Shelters in Florida

The Department of Community Affairs' Division of Emergency Management's *2005 Shelter Retrofit Report* highlights the deficit of safe public emergency shelter space. While significant progress has reduced the deficit of spaces meeting the American Red Cross standard ARC 4496, the report projects a need of almost 1.3 million public shelter spaces in 2006. The department estimates Florida will have 816,778 spaces meeting the public standard by the 2006 hurricane season.[1] According to the report, under current shelter retrofit and building programs, Florida is projected to meet its estimated emergency public shelter needs by 2011.

Effect of Proposed Changes

This bill amends s. 212.055(2), F.S., to revise the definition of the term "infrastructure" in order to allow expenditure of Local Government Infrastructure Surtax (Surtax) proceeds on improvements to certain private facilities.

Under the revised definition, local governments may expend proceeds from the Surtax to fund any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government.

Improvements eligible for funding are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner of the private facility must enter into a written contract with the local government to make the improved private facility available to the public for purposes of an emergency shelter at no cost to the local government for a minimum period of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

C. SECTION DIRECTORY:

Section 1. Amends s. 255.055, F.S., to revise the definition of the term "infrastructure" as it relates to expenditure of Local Government Infrastructure Surtax proceeds.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[1] Department of Community Affairs' *Shelter Retrofit Report*, September 1, 2005.

1. Revenues:

   None.

2. Expenditures:

   Local governments are authorized to expend Local Government Infrastructure Surtax proceeds for improvements to certain private facilities used as emergency public shelters.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of private facilities may wish to contract with a local government in order to obtain funds to make capital improvements to private property which will be used as temporary emergency public shelters. Local building owners may contract with local construction and engineering entities to perform these capital improvements for a profit. In addition, privately and publicly owned entities may compete for the same pool of surtax proceeds needed for capital improvements. In other words, if a county decides that providing adequate emergency shelter space is a priority, the Surtax proceeds may be utilized for capital improvements to privately owned facilities rather than for other public infrastructure projects.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Domestic Security Committee adopted an amendment that removed the transient rentals tax exemption. This provision would have provided an exemption from the transient rentals tax for individuals displaced due to a hurricane or other catastrophic disaster who could present

appropriate proof to the landlord. According to the Revenue Estimating Conference, this exemption would have created a $19.0 million local tax revenue deficit and an $18.2 million state tax revenue deficit in 2006-2007.[2]

[2] Revenue Estimating Conference, March 9, 2006, p.125.

CHAMBER ACTION

The Domestic Security Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to tax benefits related to catastrophic emergencies; amending s. 212.055, F.S.; including as infrastructure any fixed capital expenditure or fixed capital outlay associated with the improvement of certain private facilities made available as public shelters or staging areas for emergency response equipment during emergencies declared by the state or local government; limiting improvements to those necessary to meet current standards for public emergency evacuation shelters; requiring the owner to enter into a written contract with the local government providing improvement funding; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (2) of section 212.055, Florida Statutes, is amended to read.

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.--It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--

(d)1. The proceeds of the surtax authorized by this subsection and any interest accrued thereto shall be expended by the school district or within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure and to acquire land for public recreation or conservation or protection of natural resources and to finance the closure of county-owned or municipally owned solid waste landfills that are already closed or are required to close by order of the Department of Environmental Protection. Any use of such proceeds or interest for purposes of landfill closure prior to July 1, 1993, is ratified. Neither the proceeds nor any interest accrued thereto shall be used for operational expenses of any infrastructure, except that any county with a

population of less than 75,000 that is required to close a landfill by order of the Department of Environmental Protection may use the proceeds or any interest accrued thereto for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011(1), and charter counties may, in addition, use the proceeds and any interest accrued thereto to retire or service indebtedness incurred for bonds issued prior to July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of such proceeds or interest for purposes of retiring or servicing indebtedness incurred for such refunding bonds prior to July 1, 1999, is ratified.

2. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that ~~which~~ have a life expectancy of 5 or more years and any land acquisition, land improvement, design, and engineering costs related thereto.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and such equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements under this sub-subparagraph are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner shall enter into a written contract with the local government providing the improvement funding to make such private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum period of 10 years after completion of the improvement, with the provision that such obligation will transfer to any subsequent owner until the end of the minimum period.

3. Notwithstanding any other provision of this subsection, a discretionary sales surtax imposed or extended after the effective date of this act may provide for an amount not to exceed 15 percent of the local option sales surtax proceeds to be allocated for deposit to a trust fund within the county's accounts created for the purpose of funding economic development projects of a general public purpose targeted to improve local economies, including the funding of operational costs and incentives related to such economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 773 CS Petition Process
SPONSOR(S): Goodlette and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 720, SB 1244

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee	5 Y, 4 N	Mitchell	Mitchell
2) Transportation & Economic Development Appropriations Committee	13 Y, 3 N, w/CS	McAuliffe	Gordon
3) State Administration Council		Mitchell	Bussey
4)			
5)			

SUMMARY ANALYSIS

HB 773 CS establishes a number of safeguards for the initiative petition process.

The bill:

- Clarifies that the supervisors of elections are verifying signatures and not simply checking names.
- Requires that petitions be verified one at a time and not by random sample.
- Prohibits a petition sponsor from providing compensation to any paid petition circulator if the sponsor has filed an oath of undue burden.
- Creates the ability to file a court challenge by a political committee or elector, alleging improper verification, and requires proof by a preponderance of the evidence.
- Implements the new February 1 deadline for filing initiative petitions with the Secretary of State that is contained in Art. XI, sec 5., Fla. Const.
- Clarifies that a petition is a political advertisement and must comply with all requirements of ch. 106, F.S.
- Provides the requirements for a supervisor of elections to validate a petition.
- Creates a process for revocation of a signature on a petition form.
- Defines "petition circulator" and requires a paid circulator to wear badge identifying himself or herself as a "PAID PETITION CIRCULATOR."
- Provides protections for property owners.
- Changes a deadline for the Florida Supreme Court to complete its review of financial impact statements submitted by the Financial Impact Estimating Conference to April 1 of the year in which a general election is held.
- Petitions are deemed to be filed with the Secretary of State when the secretary determines that a sufficient number of valid and verified petitions have been signed by the number of electors required by the constitution, subject to one's right to revoke a petition signature.
- Requires supervisors of elections to record the date a petition is received and the date the signature is verified in the statewide voter registration system.
- Provides that the Secretary of State shall determine the total number of verified signatures using the number recorded in the statewide voter registration system.

The bill has no fiscal impact. Except as otherwise expressly provided, the bill is effective August 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Personal Responsibility

The bill implicates the principle of promoting personal responsibility in that it requires persons who collect signatures for citizen initiatives to be held more accountable for the accuracy of those signatures.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Art. XI, Fla. Const., governs amendments to the State Constitution. A proposed amendment is presented to the voters pursuant to one of the following methods[1]:

- Joint resolution passed by 3/5 vote of each house of the Legislature;
- Initiative petition;
- Proposal by the Constitution Revision Commission;
- Proposal by the Taxation and Budget Reform Commission; or
- Proposal by a constitutional convention.

Prior to the 1968 revision of the State Constitution, amendments could be proposed only by constitutional convention or through resolutions adopted by the Legislature. Florida adopted the citizen initiative process in 1968.[2] The first initiative appeared on Florida's ballot in 1976 and was adopted by the voters.[3] From 1976-2002, there have been 104 proposed constitutional amendments on the ballot, 21 of which were proposed by initiative.[4] Sixteen of the 21 initiative amendments were approved by Florida's electors.[5]

During the past ten years, there has been a marked increase in the number of citizen initiatives. In 1996, 37 initiatives were circulated, three of which made the ballot; in 1998, 27 initiatives were circulated, none of which made the ballot; in 2000, 16 initiatives were circulated, one of which made the ballot; and in 2002, 23 initiatives were circulated, four of which made the ballot.[6]

The procedure for placing an initiative on the ballot is provided in s. 100.371, F.S. To obtain ballot position:

- the sponsor of an amendment must register as a political committee pursuant to s. 106.03, F.S., and submit the text of the amendment with the form on which the signatures will be obtained; the form must be approved by the Secretary of State before signatures are obtained;

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[1] Art. XI, s. 1 , Fla. Const. (legislature); Art. XI, s. 2, Fla. Const. (Revision Commission); Art. XI, s. 3, Fla. Const. (citizen initiative); Art. XI, s. 4, Fla. Const. (constitutional convention); Art. XI, s. 6, Fla. Const. (Taxation and Budget Reform Commission).
[2] Art. XI, s. 3, Fla. Const.
[3] Amendment #1; Art. II, s. 8, Fla. Const. (The so-called "Sunshine Amendment." Votes For - 1,765,626; Votes Against – 461,940).
[4] Statistics provided by the Division of Elections.
[5] Id.
[6] Id. While there were no citizen initiatives on the ballot in 1998, there were four amendments proposed by legislative resolution and nine amendments proposed by the Constitutional Revision Convention.

- the Secretary of State must determine the total number of valid signatures and the distribution from congressional districts[7]; signatures are valid for four years from the date when made;
- the certification of ballot position must be completed by February 1 of the year the general election is held[8]; and
- the Supreme Court must approve the validity of the proposal.

In 2004, 488,722 signatures were required for ballot certification; in 2006, 611,009 signatures were required for ballot certification.

As of January 31, 2006, there are 50 active citizen initiatives according to the Division of Elections web site[9]. Pursuant to a constitutional amendment adopted in 2004, initiative petitions must be filed and certified with the custodian of state records (Department of State) by February 1 of the year in which the general election is held.[10] There are two citizen initiatives that made ballot position by the required February 1 deadline for the 2006 general election.

The first proposed amendment requires the legislature to annually use some of the state's tobacco settlement funds for a statewide tobacco education and prevention program targeted at youth.[11] The second proposed amendment would create a fifteen member commission to replace the legislature to apportion single-member legislative and congressional districts.[12] The second proposed amendment was ordered to be excluded from the ballot by the Florida Supreme Court on March 23, 2006, because it did not meet the single subject requirement of art. XI, s. 3, Fla. Const., and because the ballot summary was misleading and did not comply with s. 101.161, F.S.[13]

Criminal Penalties -

Certain criminal sanctions exist with regard to the voter registration and petition process. Paying a person to register to vote, paying someone to solicit voter registrations based upon the number of registrations obtained, and altering a voter registration application are all third degree felonies.[14] Signing a petition for a particular issue more than once, or signing another person's name, or a fictitious name, to a petition, is a first degree misdemeanor.[15] Supervisors of elections are currently authorized to investigate fraudulent registrations and illegal voting, and may report their findings to the state attorney or the Florida Elections Commission.[16]

During the 2004 election cycle, numerous stories appeared in newspapers throughout the state of Florida concerning alleged petition fraud. Two petition gatherers were arrested in Santa Rosa County for over 40 counts each of uttering a forged document.[17] Several other supervisors of elections found petitions signed with the names of dead voters.[18]

The Florida Department of Law Enforcement issued a press release in October of 2004

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[7] Art. XI, s. 3, Fla. Const., requires that signatures be obtained in at least ½ of the state's congressional districts, and of the state as a whole, equal to eight percent of the voters casting ballots in the last Presidential election.

[8] The new February 1 deadline was approved in the 2004 general election and is contained in s. 5(b), Art. XI, Fla. Const. Section 100.371, F.S., which implements this constitutional provision was amended in 2005 to include the February 1 deadline (s. 28, ch. 2005-278, Laws of Fla.), but the change is not effective until January 1, 2007.

[9] http://election.dos.state.fl.us/initiatives/initiativelist.asp

[10] S.J.R. 2394 amended s. 5, Art. XI, Fla. Const., and was approved by the voters on November 2, 2004.

[11] Floridians for Youth Tobacco Education, Inc. The smoking education initiative began July 20, 2005, and collected 650,403 certified petition signatures. Information taken from the Division of Elections web site.

[12] Committee for Fair Elections. The apportionment commission initiative began March 23, 2005, and collected 689,325 certified petition signatures. Information taken from the Division of Elections web site.

[13] Order Nos. SC05-1754 & SC05-1895, March 23, 2006.

[14] s. 104.012, F.S.

[15] s. 104.185, F.S.

[16] s. 104.42, F.S.

[17] *See*, "Two Pace residents accused in voter scam," Derek Pivnick, *Pensacola News Journal*, page 1A, July 2, 2004.

[18] *See*, "Names of dead persons found on petitions," Joni James and Lucy Morgan, *St. Petersburg Times*, September 28, 2004.

indicating that it had received numerous complaints relating to voting irregularities regarding voter fraud, and had initiated several investigations. While the FDLE did not reveal details of the investigations, it did say the investigations focused on the following conduct:

> In some cases, persons who believed they were signing petitions later found out that their signatures or possible forged signatures were used to complete a fraudulent voter registration. In other instances, it appears that workers hired to obtain legitimate voter registrations filled in the information on the registration forms that should have been completed by the registrants. On several occasions, workers appear to have signed multiple voter registrations themselves using information obtained during the registration drive. In many of the situations complained about, the workers were being paid on the basis of each registration form submitted.[19]

Effect of Proposed Changes

See **Section Directory** below.

C. SECTION DIRECTORY:

Section 1. Amends s. 99.097, F.S., regarding the verification of signatures on petitions. The section:

- Clarifies that the supervisors of elections are verifying signatures and not simply checking names.
- Requires that petitions be verified one at a time and not by random sample. (This codifies current practice and only applies to initiative petitions and does not affect candidate qualifying petitions).
- Prohibits a petition sponsor from providing compensation to any paid petition circulator if the sponsor has filed an oath of undue burden. If a sponsor, after filing the undue burden oath decides to pay signature gatherers, the sponsor must first pay all supervisors for each signature checked, or reimburse the General Revenue Fund for such costs.
- Creates the ability to file a court challenge by a political committee or elector, alleging improper verification, and requires proof by a preponderance of the evidence. Such a challenge must be filed no later than 90 days after the Secretary of State issues a certificate of ballot position for the issue. Improperly verified signatures will not be counted toward the required number of signatures.

Section 2. Amends s. 100.371, F.S., regarding initiatives and procedures for placement on the ballot. The section:

- Implements the new February 1 deadline for filing initiative petitions with the Secretary of State that is contained in Art. XI, sec 5., Fla. Const.
- Clarifies that a petition is a political advertisement and must comply with all requirements of ch. 106, F.S. (including requirements for political disclaimers). Political advertisements are defined in s. 106.011(17), F.S.
- Provides the requirements for a supervisor of elections to validate a petition are:
  - original signature and date signed by the elector;
  - name, address, and the voter registration number or date of birth of the elector;
  - must be a registered voter in the county in which the signature will be submitted;

[19] "FDLE Investigates Statewide Voter Fraud," press release, Florida Department of Law Enforcement, October 21, 2004.

    - must be submitted to the supervisor within 35 days after signature.
- Provides Supervisors of Elections are required to verify the petition forms within 30 days.
- Provides if a person is presented with a petition form for their signature, the person must record this fact on the form and the name and address of the petition circulator must legibly appear on the form before the signature may be verified.
- Creates a process for revocation of a signature on a petition form. A petition revocation form must be adopted by rule by the Division of Elections. A revocation form must be filed by an elector no later than February 1 immediately preceding the general election (or by Feb. 1 of the next successive general election, if the initiative has not received ballot position). The revocation process is identical to the process for submitting a petition to be verified.
- Defines "petition circulator" as "any person who, in the context of direct face-to-face conversation, presents to another person for his or her possible signature a petition form regarding ballot placement for an initiative" and "paid petition circulator" as a "petition circulator who receives any compensation as a direct or indirect consequence of these activities."
- Requires a paid circulator to wear badge identifying himself or herself as a "PAID PETITION CIRCULATOR."
- Provides protections for property owners, who may:
    - Prohibit all activity which supports or opposes initiatives; or
    - Permit or prohibit activity which supports or opposes particular initiatives; or
    - Permit activity which supports or opposes initiatives, subject to uniform time, place, or manner restrictions.
- Changes a deadline for the Florida Supreme Court to complete its review of financial impact statements submitted by the Financial Impact Estimating Conference to April 1 of the year in which a general election is held.

Section 3. Repeals section 28 of ch. 2005-278, Laws of Fla., which was scheduled to take effect January 1, 2007. Section 28 contemplated use of the statewide voter registration system for signature verification, but the system did not become operational until January 2006, just weeks prior to the February 1 petition verification deadline. Thus, the section was given an effective date of January 1, 2007. In Section 4 below, the bill reenacts many of the changes proposed in section 28 of ch. 2005-278, with additional changes outlined below.

Section 4. Further amends s. 100.371, F.S., as amended in section 3 of the bill, effective January 1, 2007. This section incorporates the changes made in section 3 of the bill and adds the following:

- Petitions are deemed to be filed with the Secretary of State when the secretary determines that a sufficient number of valid and verified petitions have been signed by the number of electors required by the constitution, subject to one's right to revoke a petition signature.
- Moves the requirements for petition signatures from s. 100.371(2), F.S., to s. 100.371(7), F.S. Subsection 100.371(2), F.S., is deleted.
- Requires supervisors of elections to record the date a petition is received and the date the signature is verified in the statewide voter registration system.
- Re-enacts the provision that petition signatures are valid for 4 years from the date made.
- Provides that the Secretary of State shall determine the total number of verified signatures using the number recorded in the statewide voter registration system. This system became operational in January 2006 and was not used to verify petition signatures for the 2006 election cycle.

Section 5. Amends s. 101.161, F.S., to correct a cross reference.

Section 6. Repeals section 33 of chapter 2005-278, Laws of Fla., which was scheduled to take effect January 1, 2007. Section 7 of this bill reinstates the provisions of the repeal and corrects a cross reference.

Section 7. Amends s. 101.161, F.S., regarding referenda and ballots, effective January 1, 2007.

- Technical change to correct a reference to s. 100.371(10), F.S.

Section 8. Applies the changes in the bill only to petitions collected and submitted for verification after the effective date of the act (August 1, 2006).

Section 9. Provides a severability clause.

Section 10. Provides an effective date of August 1, 2006, unless otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

HB 773 CS grants additional rulemaking authority to the Division of Elections.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its April 4, 2006, meeting, the Transportation and Economic Development Appropriations Committee approved HB 773 with one strike-all amendment. Explanation of the changes made in the strike-all are contained in the Section Directory.

CHAMBER ACTION

The Transportation & Economic Development Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to initiative procedures and standards; amending s. 99.097, F.S.; revising requirements for verification of signatures on petitions; providing requirements for initiative sponsors filing for undue burden; providing procedures to contest alleged improper signature verification; repealing s. 28, ch. 2005-278, Laws of Florida, relating to procedures for placement of initiatives on the ballot; amending s. 100.371, F.S.; revising procedures for placing an initiative on the ballot; providing requirements for information to be contained on petitions; providing procedure for revocation of a petition signature; requiring a statement on the ballot regarding the financial impact statement; providing regulation for initiative petition circulators and their activities; repealing s. 33, ch. 2005-278, Laws of Florida, relating to referenda and ballots; amending s. 101.161, F.S.; conforming a cross-reference; providing for

verifying and counting signatures submitted for verification before the effective date of the act; providing severability; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1), (3), and (4) of section 99.097, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

99.097 Verification of signatures on petitions.--

(1) As determined by each supervisor, based upon local conditions, the verification of signatures ~~checking of names~~ on petitions may be based on the most inexpensive and administratively feasible of either of the following methods of verification:

(a) A name-by-name, signature-by-signature check of the number of valid ~~authorized~~ signatures on the petitions; or

(b) A check of a random sample, as provided by the Department of State, of names and signatures on the petitions. The sample must be such that a determination can be made as to whether or not the required number of valid signatures has ~~have~~ been obtained with a reliability of at least 99.5 percent. Rules and guidelines for this method of petition verification shall be adopted ~~promulgated~~ by the Department of State, which may include a requirement that petitions bear an additional number of names and valid signatures, not to exceed 15 percent of the names and valid signatures otherwise required. If the petitions do not meet such criteria, then the use of the verification

method described in this paragraph shall not be available to supervisors.

Notwithstanding any other provision of law, petitions to secure ballot placement for an issue, and petition revocations directed thereto pursuant to s. 100.371, must be verified by the method provided in paragraph (a).

(3)(a) A signature ~~name~~ on a petition, in a name that ~~which name~~ is not in substantially the same form as a name on the voter registration books, shall be counted as a valid signature if, after comparing the signature on the petition with the signature of the alleged signer as shown on the registration books, the supervisor determines that the person signing the petition and the person who registered to vote are one and the same. In any situation in which this code requires the form of the petition to be prescribed by the division, no signature shall be counted toward the number of signatures required unless it is on a petition form prescribed by the division.

(b) If a voter signs a petition and lists an address other than the legal residence where the voter is registered, the supervisor shall treat the signature as if the voter had listed the address where the voter is registered.

(4)(a) The supervisor shall be paid in advance the sum of 10 cents for each signature verified ~~checked~~ or the actual cost of verifying ~~checking~~ such signature, whichever is less, by the candidate or, in the case of a petition to have an issue placed on the ballot by initiative, by the initiative sponsor ~~person or organization submitting the petition~~. However, if a candidate or

initiative sponsor~~, person, or organization seeking to have an issue placed upon the ballot~~ cannot pay such charges without imposing an undue burden on personal resources or upon the resources otherwise available to such candidate or initiative sponsor, ~~person, or organization,~~ such candidate or initiative sponsor~~, person, or organization~~ shall, upon written certification of such inability given under oath to the supervisor, be entitled to have the signatures verified at no charge. In the event a candidate or initiative sponsor~~, person, or organization submitting a petition to have an issue placed upon the ballot~~ is entitled to have the signatures verified at no charge, the supervisor of elections of each county in which the signatures are verified at no charge shall submit the total number of such signatures checked in the county to the Chief Financial Officer no later than December 1 of the general election year, and the Chief Financial Officer shall cause such supervisor of elections to be reimbursed from the General Revenue Fund in an amount equal to 10 cents for each signature verified ~~name checked~~ or the actual cost of verifying ~~checking~~ such signatures, whichever is less. In no event shall such reimbursement of costs be deemed or applied as extra compensation for the supervisor. Petitions shall be retained by the supervisors for a period of 1 year following the election for which the petitions were circulated.

(b) An initiative sponsor that has filed a certification of undue burden may not provide compensation to any paid petition circulator, as defined in s. 100.371, unless the initiative sponsor first pays all supervisors for each signature

verified or reimburses the General Revenue Fund for such costs. If an initiative sponsor subject to this paragraph provides compensation to a paid petition circulator before the date the initiative sponsor pays all supervisors for each signature verified or reimburses the General Revenue Fund for such costs, no signature on a petition circulated by the paid petition circulator before that date may be counted toward the number of valid signatures required for ballot placement until the initiative sponsor pays all supervisors for each signature checked or reimburses the General Revenue Fund for such costs.

(6)(a) The alleged improper verification of a signature on a petition to secure ballot placement for an issue pursuant to this code may be contested in the circuit court by a political committee or by an elector. The contestant shall file a complaint setting forth the basis of the contest, together with the fees prescribed in chapter 28, with the clerk of the circuit court in the county in which the petition is certified or in Leon County if the complaint is directed to petitions certified in more than one county.

(b) If the contestant demonstrates by a preponderance of the evidence that one or more petitions were improperly verified, the signatures appearing on such petitions may not be counted toward the number of valid signatures required for ballot placement. If an action brought under this subsection is resolved after the Secretary of State has issued a certificate of ballot position for the issue, but the contestant demonstrates that the person or organization submitting the petition had obtained verification of an insufficient number of

valid and verified signatures to qualify for ballot placement, the issue shall be removed from the ballot or, if such action is impractical, any votes cast for or against the issue may not be counted and shall be invalidated.

(c) An action under this subsection must be commenced no later than 90 days after the Secretary of State issues a certificate of ballot position for the issue.

Section 2. Section 100.371, Florida Statutes, is amended to read:

100.371 Initiatives; procedure for placement on ballot.--

(1) Constitutional amendments proposed by initiative shall be placed on the ballot for the general election if an initiative petition is filed with the Secretary of State by February 1 of the year in which the general election is to be held ~~occurring in excess of 90 days from the certification of ballot position by the Secretary of State~~.

(2) Certification of ballot position ~~Such certification~~ shall be issued when the Secretary of State has received verification certificates from the supervisors of elections indicating that the requisite number and distribution of valid petitions bearing the signatures of electors have been submitted to and verified by the supervisors. Every signature shall be dated by the elector when made. Signatures are ~~and shall be~~ valid for a period of 4 years following such date, provided all other requirements of law are satisfied ~~complied with~~.

(3) The sponsor of an initiative amendment shall, prior to obtaining any signatures, register as a political committee pursuant to s. 106.03 and submit the text of the proposed

amendment to the Secretary of State, with the form on which the signatures will be affixed, and shall obtain the approval of the Secretary of State of such form. The form shall consist of a single card or sheet of paper unconnected with any other card or sheet of paper and shall be circulated for signatures in this format. The division ~~Secretary of State~~ shall adopt rules pursuant to s. 120.54 prescribing the style and requirements of such form. Upon filing with the Secretary of State, the text of the proposed amendment and all forms filed in connection with this section must, upon request, be made available in alternative formats. The contents of a petition form are limited to those items required by statute or rule. A petition form is a political advertisement as defined in s. 106.011 and, as such, must comply with all relevant requirements of chapter 106.

(4) The supervisor of elections shall record the date each petition form is received by the supervisor and the date the signature on the form is verified as valid. The supervisor shall verify that the signature on a petition form is valid only if the form complies with all of the following:

(a) The form must contain the original signature of the purported elector.

(b) The purported elector must accurately record on the form the date on which he or she signed the form.

(c) The date the elector signed the form, as recorded by the elector, must be no more than 35 days before the date the form is received by the supervisor of elections.

(d) The form must accurately set forth the purported elector's name, street address, county, and voter registration number or date of birth.

(e) The purported elector must be, at the time he or she signs the form, a duly qualified and registered elector authorized to vote in the county in which his or her signature is submitted.

(5) An elector's signature on a petition form may be revoked by submitting to the appropriate supervisor of elections a signed petition-revocation form adopted by rule for this purpose by the division. The petition-revocation form is subject to the same relevant requirements as the corresponding petition form under this code and must be approved by the Secretary of State before any signature is obtained. The petition-revocation form shall be filed with the supervisor of elections no later than the February 1 preceding the next general election or, if the initiative amendment is not certified for ballot position in that election, no later than the February 1 preceding the next successive general election. The supervisor of elections shall promptly verify the signature on the petition-revocation form and process such revocation within 30 days after receiving payment, in advance, of a fee of 10 cents or the actual cost of verifying such signature, whichever is less.

(6)(a) If a person is presented with a petition form or petition-revocation form for his or her possible signature by a petition circulator, the person must record this fact on the form and the name and address of the petition circulator must legibly appear on the form before the signature on the form may

be verified by the supervisor. For purposes of this subsection, the term "petition circulator" means any person who, in the context of a direct face-to-face conversation, presents to another person for his or her possible signature a petition form or petition-revocation form regarding ballot placement for an initiative.

(b) A paid petition circulator shall, when engaged in the activities described in paragraph (a), wear a prominent badge, in a form and manner prescribed by rule by the division, identifying him or her as a "PAID PETITION CIRCULATOR." For purposes of this paragraph, the term "paid petition circulator" means a petition circulator who receives any compensation as a direct or indirect consequence of these activities.

(7) In addition to any other practice or action permissible under law, an owner, lessee, or other person lawfully exercising control over private property may:

(a) Prohibit persons from engaging in activity on the property that supports or opposes initiatives;

(b) Permit or prohibit persons from engaging in activity on the property in support of or opposition to a particular initiative; or

(c) Permit persons to engage in activity on the property that supports or opposes initiatives, subject to restrictions with respect to time, place, and manner which are reasonable and uniformly applied.

(8) A signed petition form or petition-revocation form regarding ballot placement for an initiative that does not fully comply with the applicable provisions of this code, or that was

obtained in violation of the applicable provisions of this code, may be verified by the supervisor of elections and counted toward the number of valid signatures required for ballot placement only after those deficiencies or violations are corrected.

(9) ~~(4)~~ The sponsor shall submit signed and dated forms to the appropriate supervisor of elections for verification as to the number of registered electors whose valid signatures appear thereon. The supervisor shall promptly verify the signatures within 30 days after receiving ~~upon~~ payment, in advance, of the fee required by s. 99.097. Upon completion of verification, the supervisor shall execute a certificate indicating the total number of signatures checked, the number of signatures verified as valid and as being of registered electors, the number of signatures validly revoked pursuant to subsection (5), and the distribution of such signatures by congressional district. This certificate shall be immediately transmitted to the Secretary of State. The supervisor shall retain the signed petition ~~signature~~ forms and petition-revocation forms for at least 1 year following the election in which the issue appeared on the ballot or until the Division of Elections notifies the supervisors of elections that the committee which circulated the petition is no longer seeking to obtain ballot position.

(10) ~~(5)~~ The Secretary of State shall determine from the verification certificates received from supervisors of elections the total number of verified valid signatures and the distribution of such signatures by congressional districts. Upon a determination that the requisite number and distribution of

valid signatures have been obtained, the secretary shall issue a certificate of ballot position for that proposed amendment and shall assign a designating number pursuant to s. 101.161. A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by the secretary of a certificate or certificates from supervisors of elections indicating that valid and verified ~~the~~ petition forms have ~~has~~ been signed by the constitutionally required number and distribution of electors pursuant to this code, subject to the right of revocation established in this section.

(11) ~~(6)~~ (a) Within 45 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State ~~or, within 30 days after such receipt if receipt occurs 120 days or less before the election at which the question of ratifying the amendment will be presented~~, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative. The ballot must include a statement, as prescribed by rule of the Department of State, to the effect that the financial impact statement is required under the State Constitution and the Florida Statutes and should not be construed as an endorsement by the state of the proposed revision or amendment to the State Constitution. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

(b)1. The Financial Impact Estimating Conference shall provide an opportunity for any proponents or opponents of the initiative to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research. All meetings of the Financial Impact Estimating Conference shall be open to the public as provided in chapter 286.

2. The Financial Impact Estimating Conference is established to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. The Financial Impact Estimating Conference shall consist of four principals: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate fiscal expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative.

3. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 75 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in

accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

4. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by April 1 of the year in which the general election is to be held ~~5 p.m. on the 75th day before the election~~, the following statement shall appear on the ballot pursuant to s. 101.161(1): "The financial impact of this measure, if any, cannot be reasonably determined at this time."

(c) The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. 101.161(1).

(d)1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered by April 1 of the year in which the general election is to be held ~~at least 75 days before the election at which the question of ratifying the amendment will be presented~~. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on April 1 of the year in which the general election is to be held ~~the 75th day before the election~~, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial

information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall include the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the publication or mailing required by s. 101.20.

(12) ~~(7)~~ The division ~~Department of State~~ may adopt rules in accordance with s. 120.54 to carry out this section ~~the provisions of subsections (1)-(6)~~.

Section 3. Section 28 of chapter 2005-278, Laws of Florida, is repealed.

Section 4. Effective January 1, 2007, section 100.371, Florida Statutes, as amended by this act, is amended to read:

100.371 Initiatives; procedure for placement on ballot.--

(1) Constitutional amendments proposed by initiative shall be placed on the ballot for the general election if an initiative petition is filed with the Secretary of State by February 1 of the year in which the general election is to be held. A petition shall be deemed to be filed with the Secretary of State upon the date that the secretary determines that valid and verified petitions have been signed by the constitutionally required number and distribution of electors pursuant to this

code, subject to the right of revocation established in this section.

~~(2) Certification of ballot position shall be issued when the Secretary of State has received verification certificates from the supervisors of elections indicating that the requisite number and distribution of valid petitions bearing the signatures of electors have been submitted to and verified by the supervisors. Every signature shall be dated by the elector when made. Signatures are valid for a period of 4 years following such date, provided all other requirements of law are satisfied.~~

(2)~~(3)~~ The sponsor of an initiative amendment shall, prior to obtaining any signatures, register as a political committee pursuant to s. 106.03 and submit the text of the proposed amendment to the Secretary of State, with the form on which the signatures will be affixed, and shall obtain the approval of the Secretary of State of such form. The form shall consist of a single card or sheet of paper unconnected with any other card or sheet of paper and shall be circulated for signatures in this format. The division shall adopt rules pursuant to s. 120.54 prescribing the style and requirements of such form. Upon filing with the Secretary of State, the text of the proposed amendment and all forms filed in connection with this section must, upon request, be made available in alternative formats. The contents of a petition form are limited to those items required by statute or rule. A petition form is a political advertisement as defined in s. 106.011 and, as such, must comply with all relevant requirements of chapter 106.

(3)~~(4)~~ The supervisor of elections shall record the date each petition form is received by the supervisor and the date the signature on the form is verified as valid. The supervisor shall also promptly record these dates in the statewide voter registration system in the manner prescribed by the Secretary of State. The supervisor shall verify that the signature on a petition form is valid only if the form complies with all of the following:

(a) The form must contain the original signature of the purported elector.

(b) The purported elector must accurately record on the form the date on which he or she signed the form.

(c) The date the elector signed the form, as recorded by the elector, must be no more than 35 days before the date the form is received by the supervisor of elections.

(d) The form must accurately set forth the purported elector's name, street address, county, and voter registration number or date of birth.

(e) The purported elector must be, at the time he or she signs the form, a duly qualified and registered elector authorized to vote in the county in which his or her signature is submitted.

(4)~~(5)~~ An elector's signature on a petition form may be revoked by submitting to the appropriate supervisor of elections a signed petition-revocation form adopted by rule for this purpose by the division. The petition-revocation form is subject to the same relevant requirements as the corresponding petition form under this code and must be approved by the Secretary of

State before any signature is obtained. The petition-revocation form shall be filed with the supervisor of elections no later than the February 1 preceding the next general election or, if the initiative amendment is not certified for ballot position in that election, no later than the February 1 preceding the next successive general election. The supervisor of elections shall promptly verify the signature on the petition-revocation form and process such revocation within 30 days after receiving payment, in advance, of a fee of 10 cents or the actual cost of verifying such signature, whichever is less. The supervisor shall promptly record each valid petition-revocation form in the statewide voter registration system in the manner prescribed by the Secretary of State.

(5) ~~(6)~~ (a) If a person is presented with a petition form or petition-revocation form for his or her possible signature by a petition circulator, the person must record this fact on the form and the name and address of the petition circulator must legibly appear on the form before the signature on the form may be verified by the supervisor. For purposes of this subsection, the term "petition circulator" means any person who, in the context of a direct face-to-face conversation, presents to another person for his or her possible signature a petition form or petition-revocation form regarding ballot placement for an initiative.

(b) A paid petition circulator shall, when engaged in the activities described in paragraph (a), wear a prominent badge, in a form and manner prescribed by rule by the division, identifying him or her as a "PAID PETITION CIRCULATOR." For

purposes of this paragraph, the term "paid petition circulator" means a petition circulator who receives any compensation as a direct or indirect consequence of these activities.

(6) ~~(7)~~ In addition to any other practice or action permissible under law, an owner, lessee, or other person lawfully exercising control over private property may:

(a) Prohibit persons from engaging in activity on the property that supports or opposes initiatives;

(b) Permit or prohibit persons from engaging in activity on the property in support of or opposition to a particular initiative; or

(c) Permit persons to engage in activity on the property that supports or opposes initiatives, subject to restrictions with respect to time, place, and manner which are reasonable and uniformly applied.

(7) ~~(8)~~ A signed petition form or petition-revocation form regarding ballot placement for an initiative that does not fully comply with the applicable provisions of this code, or that was obtained in violation of the applicable provisions of this code, may be verified by the supervisor of elections and counted toward the number of valid signatures required for ballot placement only after those deficiencies or violations are corrected.

(8) ~~(9)~~ Each signature shall be dated by the elector when made and shall be valid for a period of 4 years following such date, if all other requirements of law are met. The sponsor shall submit signed and dated forms to the appropriate supervisor of elections for verification as to the number of

registered electors whose valid signatures appear thereon. The supervisor shall promptly verify the signatures within 30 days after receiving payment, in advance, of the fee required by s. 99.097. The supervisor shall promptly record each petition form verified as valid in the statewide voter registration system in the manner prescribed by the Secretary of State ~~Upon completion of verification, the supervisor shall execute a certificate indicating the total number of signatures checked, the number of signatures verified as valid and as being of registered electors, the number of signatures validly revoked pursuant to subsection (5), and the distribution of such signatures by congressional district. This certificate shall be immediately transmitted to the Secretary of State~~. The supervisor shall retain the signed petition forms and petition-revocation forms for at least 1 year following the election in which the issue appeared on the ballot or until the Division of Elections notifies the supervisors of elections that the committee which circulated the petition is no longer seeking to obtain ballot position.

(9) ~~(10)~~ The Secretary of State shall determine from the signatures verified by the ~~verification certificates received from~~ supervisors of elections and recorded in the statewide voter registration system the total number of verified valid signatures and the distribution of such signatures by congressional districts. Upon a determination that the requisite number and distribution of valid signatures have been obtained, the secretary shall issue a certificate of ballot position for that proposed amendment and shall assign a designating number

pursuant to s. 101.161. ~~A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by the secretary of a certificate or certificates from supervisors of elections indicating that valid and verified petition forms have been signed by the constitutionally required number and distribution of electors pursuant to this code, subject to the right of revocation established in this section.~~

(10) ~~(11)~~ (a) Within 45 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative. The ballot must include a statement, as prescribed by rule of the Department of State, to the effect that the financial impact statement is required under the State Constitution and the Florida Statutes and should not be construed as an endorsement by the state of the proposed revision or amendment to the State Constitution. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

(b)1. The Financial Impact Estimating Conference shall provide an opportunity for any proponents or opponents of the initiative to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research. All meetings of the

Financial Impact Estimating Conference shall be open to the public as provided in chapter 286.

2. The Financial Impact Estimating Conference is established to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. The Financial Impact Estimating Conference shall consist of four principals: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate fiscal expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative.

3. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 75 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

4. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by April 1 of the year in which the general election is to be held, the following statement shall appear on the ballot pursuant to s. 101.161(1): "The financial impact of this measure, if any, cannot be reasonably determined at this time."

(c) The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. 101.161(1).

(d)1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered by April 1 of the year in which the general election is to be held. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on April 1 of the year in which the general election is to be held, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall

include the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the publication or mailing required by s. 101.20.

(11) ~~(12)~~ The division may adopt rules in accordance with s. 120.54 to carry out this section.

Section 5. Subsection (1) of section 101.161, Florida Statutes, is amended to read:

101.161 Referenda; ballots.--

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning

the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(11) ~~s. 100.371(6)~~. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

Section 6. Section 33 of chapter 2005-278, Laws of Florida, is repealed.

Section 7. Effective January 1, 2007, subsection (1) of section 101.161, Florida Statutes, as amended by this act, is amended to read:

101.161 Referenda; ballots.--

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment

proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(10) ~~s. 100.371(11)~~. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

Section 8. Any signature gathered on a previously approved initiative petition form that has been submitted for verification before August 1, 2006, may be verified and counted, if otherwise valid. However, any initiative petition form that is submitted for verification on or after that date may be verified and counted only if it complies with this act and has been approved by the Secretary of State before obtaining elector signatures.

Section 9. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 10. Except as otherwise expressly provided in this act, this act shall take effect August 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1007 CS State Parks
SPONSOR(S): Proctor and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Military & Veteran Affairs Committee	8 Y, 0 N, w/CS	Marino	Cutchins
2) Tourism Committee	5 Y, 0 N	Langston	McDonald
3) Agriculture & Environment Appropriations Committee	11 Y, 0 N	Dixon	Dixon
4) State Administration Council		Marino	Bussey
5)			

SUMMARY ANALYSIS

The Committee Substitute for House Bill 1007 allows free, state park admission to active members of the Florida National Guard and their spouses and minor children upon submission of a valid active Florida National Guard member or dependent identification card.

The revenue impact to the Division of Recreation and Parks (division) is estimated to be a loss of approximately $100,621. The division, however, estimated a higher impact in its analysis.

The impact to the state from lost sales tax revenue from annual pass sales is indeterminate and expected to be minimal.

This committee substitute takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families – The Committee Substitute for House Bill 1007 benefits families of Florida National Guard members by allowing them to visit state parks together for free.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Under the Florida Department of Environmental Protection, the division operates and maintains 159 state parks, which cover 723,852 acres, with operating and capital budgets totaling around $105 million[1]. Park revenues during that time were approximately $36.77 million. Park admittance fees pay for about 35% of the operating costs of the state parks. Most of the rest of the revenues come from the Land Acquisition Trust Fund which is funded primarily from documentary stamp taxes.

In 2004-2005, 17.3 million people visited Florida's state parks, down from a record attendance year in 2003-2004 of 19.1 million[2]. The division attributed the decrease in attendance to the effects of the above normal hurricane activity that year.

Entrance or admission fees to state parks is charged per carload (up to eight people), and the amount of the fee is based upon the park to which visitors are entering. Park admission fees can range from $3 to $5. Individuals may purchase an annual pass if they visit the parks frequently at a cost of $43.40 (sales tax included), and families may purchase an annual pass for $85.80 (sales tax included). Approximately 31,900[3] annual passes were sold in 2004-2005.

The division states that the "Florida Park Service already allows the military free (state) park admission when requested[4]." The division further confirmed that this "unwritten policy[5]" extends to all military personnel, which includes active duty, reservists, and National Guardsmen, and that the military personnel usually call ahead or show ID at the entry point in order to take advantage of this policy.

Effect of Proposed Changes:

The Committee Substitute for House Bill 1007 appears to codify part of an existing policy within the division by allowing active members of the Florida National Guard (FNG), and their spouses and minor children, free state park admission upon submission of a valid active FNG member or dependent identification card. This committee substitute does not affect active duty and reserve members of the armed forces who would continue to pay for park entrance or be able to take advantage of the "unwritten policy" stated above. This committee substitute does not waive fees that entrants would pay for services such as overnight parking or renting campsites.

This committee substitute takes effect July 1, 2006.

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[1] Communication with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. Division of Recreation and Parks: Historical Data. February 23, 2006. Email on file with Committee on Military & Veteran Affairs.
[2] ib id.
[3] Communication with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. February 22, 2006. Email on file with Committee on Military & Veteran Affairs.
[4] Department of Environmental Protection. Draft Bill Analysis 2006: HB 1007. March 10, 2006. On file with Committee on Military & Veteran Affairs.
[5] Conversation with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. March 10, 2006.

C. SECTION DIRECTORY:

Section 1. Creates an undesignated section in the law that allows active members of the FNG, and their spouses and minor children, to gain entry to a state park without paying the admission fee upon submission of a valid active FNG member or dependent identification card.

Section 2. Provides that this act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The potential loss to the division, using a simple average method, is approximately $100,621 if every FNG individual or family generated four carloads a year.

The state may lose an indeterminate and minimal amount of sales tax from lost annual pass sales ($5.80 per family annual pass and $3.40 per individual annual pass).

Considering, however that the "unwritten policy" does exist, the actual revenue impact could be considerably lower.

2. Expenditures:

There are no known or expected fiscal impacts on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A family of an active FNG member could save $85.80 (sales tax included) per year if they normally purchased an annual pass, or they could save $3, $4, or $5 per visit, depending on the park, if they were not on an annual plan.

An active FNG individual could save $43.40 (sales tax included) per year if they normally purchased an annual pass, or they could save $3, $4, or $5 per visit, depending on the park, if they were not on an annual plan.

D. FISCAL COMMENTS:

To calculate the $100,621 fiscal impact, staff assumes that:

- The unwritten policy does not exist; and
- The average revenue per visitor is $2.13, which was calculated by dividing total revenue ($36,766,200) in 2004-2005 by total visitors (17,296,273) in 2004-2005; and
- The number of unique FNG carloads corresponds to the current strength of the FNG (11,810[6]); and

[6] Conversation with Glenn Sutphin, Legislative Director Florida Department of Military Affairs. January 12, 2006.

- Each unique carload visits a state park four times in a year; and
- The percent of annual passes is negligible to the calculations, since if all 31,900 annual pass visitors made 20 trips (approximate number of trips necessary to gain full value of pass cost) to the parks that would only be about 3% of the total 17.3 million visitors.

Therefore, the number of unique carloads multiplied by four visits in a year multiplied by the average revenue per visitor equals approximately $100,621[7].

The division estimates a revenue impact of $1.2 million[8]. However, they assumed that the current FNG strength was 15,000 and that each FNG would be equivalent to the loss of the $80 family annual pass. Demographic analysis shows approximately 57.7% of FNG members have family responsibilities, so the remaining 42.3% would be more likely to purchase the $40 individual annual pass under the division's assumptions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The committee substitute does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

   There do not appear to be any constitutional issues with this bill.

B. RULE-MAKING AUTHORITY:

This committee substitute does not appear to grant any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Committee on Military & Veteran Affairs adopted an amendment that requires the submission of a valid active FNG member or dependent identification card in order for a person or family to gain the free admission to a state park provided for in the bill. The committee then voted to report the committee substitute favorably by a vote of 8 to 0.

[7] (11,810 x 4 x $2.13)

[8] Department of Environmental Protection. Draft Bill Analysis 2006: HB 1007. March 10, 2006. On file with Committee on Military & Veteran Affairs.

CHAMBER ACTION

The Military & Veteran Affairs Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to state parks; providing members of the Florida National Guard and certain relatives of such members free entrance to state parks; requiring presentation of certain identification as a condition for free entrance; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. A person who is a member of the Florida National Guard, and the spouse and minor children of such a person, shall not be charged a fee for admission to a state park upon presentation of a valid, active Florida National Guard member or dependent identification card.

Section 2. This act shall take effect July 1, 2006.

HCB 6001 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HCB 6001 CS PHCB GO 06-01 Per Diem and Travel Expenses
SPONSOR(S): Governmental Operations Committee, Coley, Ausley and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 428

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	7 Y, 0 N	Mitchell	Williamson
1) Fiscal Council	19 Y, 0 N, w/CS	Dobbs	Kelly
2) State Administration Council		Mitchell	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill makes a number of changes relating to the per diem and travel expenses of public officers, employees, and authorized persons:

- Revises the legislative intent;
- Changes the rate of per diem from the 1981 rate of $50 to $75;
- Increases the subsistence reimbursement for meals from the 1981 rates: $3 to $5 for breakfast, $6 to $11 for lunch, and $12 to $19 for dinner;
- Raises the mileage allowance for use of a privately owned vehicle from 29 cents per mile, which was established in 1994, to 44.5 cents per mile;
- Authorizes counties, county officers, district school boards, and special districts to establish per diem and subsistence rates as long as those rates are not less than the rates currently in effect; and
- Removes duplicative or incorrect language and makes minor grammatical changes.

The bill does not appear to create, modify, or eliminate rulemaking authority.

This bill provides appropriations of $8.4 million from recurring General Revenue and $12.7 million from recurring trust funds.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the standard per diem, subsistence, and mileage rates for public officers, public employees, or authorized persons performing authorized travel.

B. EFFECT OF PROPOSED CHANGES:

Section 112.061, Florida Statutes (2005), sets forth the per diem and travel expenses of public officers,[1] employees,[2] and authorized persons[3] when performing authorized travel.[4]

A version of this section was first enacted by the Legislature in 1945.[5] Much of the current form of this section, however, dates back to 1963.[6]

This bill changes seven aspects of section 112.061, Florida Statutes: (1) legislative intent, (2) authority to incur travel expenses, (3) Class C travel reimbursement, (4) rates of per diem and subsistence allowance, (5) transportation reimbursement, (6) travel authorization and voucher forms, and (7) applicability to certain local government entities. This bill also contains an appropriation.

Legislative Intent

Subsection (1) of section 112.061, Florida Statutes sets forth the legislative intent. It recognizes the existence of "inequities, conflicts, inconsistencies, and lapses in the numerous laws regulating or attempting to regulate travel expenses of public officers, employees, and authorized persons in the state." The expressed intent of the Legislature is to remedy these inequities, conflicts, inconsistencies, and lapses by establishing uniform maximum rates applicable to all public officers, employees, and authorized persons whose travel expenses are paid by a public agency, along with limitations and exceptions.[7]

This subsection also sets forth the legislative intent to preserve standardization and uniformity by prevailing over any conflicting provisions in special law, local law, or general law – unless the general law contains a specific exemption.[8]

This bill changes the legislative intent to provide that the purpose is to *prevent* the inequities, conflicts, inconsistencies, and lapses. The bill replaces the term "uniform maximum rates" with the term

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[1] Fla. Stat. § 112.061(2)(c) (2005) ("An individual who in the performance of his or her official duties is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.")
[2] Fla. Stat. § 112.061(2)(d) (2005) ("An individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.")
[3] Fla. Stat. § 112.061(2)(e) (2005) ("A person other than a public officer or employee as defined herein, whether elected or commissioned or not, who is authorized by an agency head to incur travel expenses in the performance of official duties; a person who is called upon by an agency to contribute time and services as consultant or adviser; or a person who is a candidate for an executive or professional position.")
[4] Fla. Stat. § 112.061(2)(f) (2005) ("Traveler--A public officer, public employee, or authorized person, when performing authorized travel.")
[5] Ch. 22830, Laws of Fla.
[6] Ch. 63-400, Laws of Fla.
[7] Fla. Stat. §112.061(1) (2005).
[8] *Id.*

"standard travel reimbursement rates."[9] The bill also recognizes the procedures and exemptions provided by section 112.061, Florida Statutes.

Authority to Incur Travel Expenses

Subsection (3) relates to the authority to incur travel expenses. The only changes the bill makes to this subsection are to remove an unnecessary reference to "authorized persons" in the paragraph on costs of per diem of travelers[10] for foreign travel and to make a conforming change to the word "maximum" (to "rate") in the paragraph related to the Department of Health.

Class C Travel Reimbursements

Section 112.061, Florida Statutes, recognizes three types of travel:

- Class A travel is continuous travel of 24 hours or more away from official headquarters.[11]
- Class B travel is continuous travel of less than 24 hours which involves overnight absence from official headquarters.[12]
- Class C travel is travel for short or day trips where the traveler is not away from his or her official headquarters overnight.[13]

Yet, since 2001, the Legislature has eliminated reimbursement for Class C (short or day trips) travel for "state travelers" through the implementing bill for the General Appropriations Act[14]:

> For the 2005-2006 fiscal year only and notwithstanding the other provisions of this subsection, for Class C travel, a state traveler shall not be reimbursed on a per diem basis nor shall a traveler receive subsistence allowance. This paragraph expires July 1, 2006.[15]

This bill removes the two expiring references, which currently eliminate Class C travel (short or day trips) reimbursement for state travelers.

Rates of Per Diem and Subsistence Allowance

Subsection (6) relates to rates of per diem and subsistence allowance. When traveling as Class A travel (24 hours or more) or Class B travel (less than 24 hours, but overnight) to a convention or conference or within or outside the state on state business, travelers are currently allowed to choose one of two types of "subsistence" reimbursements: (1) a $50 per diem; or (2) actual expenses for lodging at a single-occupancy rate and a set reimbursement for meals, if actual expenses exceed $50.[16] The meal reimbursement rate is the same as that set for Class C (short or day trips): $3 for breakfast, $6 for lunch, and $12 for dinner.[17] These meal and per diem rates were established in 1981.[18]

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[9] As discussed in the section on Applicability to Certain Local Governments, section 112.061, Florida Statutes, no longer governs the per diem and travel expenses of municipalities. Counties, certain county constitutional officers, district school boards, and special districts will also have considerably more latitude in setting their own per diem and subsistence reimbursement rates under the provisions of this bill. As such, section 112.061, Florida Statutes, does not establish a "uniform maximum rate" as much as it establishes state "standard travel reimbursement rates."

[10] The definition of "traveler" includes "authorized person," *supra* note 4.

[11] Fla. Stat. §112.061(2)(k) (2005).

[12] Fla. Stat. §112.061(2)(l) (2005).

[13] Fla. Stat. §112.061(2)(m) (2005).

[14] Ch. 2001-254, Laws of Fla., § 48; ch. 2002-402, Laws of Fla., § 46; ch. 2003-399, Laws of Fla., § 49; ch. 2004-269, Laws of Fla., § 32; ch. 2005-71, Laws of Fla., § 23.

[15] Fla. Stat. § 112.061(5)(c) and (6)(d) (2005).

[16] Fla. Stat. § 112.061(6)(a) (2005).

[17] Fla. Stat. § 112.061(6)(b) (2005).

[18] Ch. 81-207, Laws of Fla.

This bill increases the per diem rate to $75 and increases the subsistence reimbursement rate for meals: $5 for breakfast, $11 for lunch, and $19 for dinner.

Transportation Reimbursement

Subsection (7) relates to transportation and permits the use of privately owned vehicles for official travel instead of publicly owned vehicles or common carriers.[19] Travel using a privately owned vehicle is reimbursed at a fixed rate of 29 cents per mile or the common carrier fare for such travel.[20] The current mileage reimbursement rate was established in 1994.[21]

This bill increases the mileage allowance for travel using a privately owned vehicle to 44.5 cents per mile[22] and makes it an economical determination by the agency head to pay the common carrier fare instead.

Travel Authorization and Voucher Forms

Subsection (11) relates to travel authorization and voucher forms. This bill makes minor grammatical changes to this subsection.

Applicability to Certain Local Government Entities

Subsection (14) was added to section 112.061, Florida Statutes, in 2003.[23] This subsection allows the counties, county constitutional officers, district school boards, and independent special districts to establish rates that *exceed* the maximum travel reimbursement rates. By contrast, section 166.021, Florida Statutes, which was also created in 2003, authorizes municipalities to establish a per diem and travel expense policy and exempts those municipalities who do establish such a policy from the provisions of section 112.061, Florida Statutes.[24]

This bill allows counties, county constitutional officers, district school boards, and independent special districts to establish per diem and subsistence rates which vary from section 112.061, Florida Statutes, as long as those rates are not less than the rates in effect for the 2005-2006 fiscal year: $50 for per diem, $3 for breakfast, $6 for lunch, and $12 for dinner.

Appropriation

The bill provides $8.4 million from General Revenue and $12.7 million from trust funds for distribution to the agencies.

C. SECTION DIRECTORY:

Section 1: Amends section 112.061, Florida Statutes, related to the per diem and travel expenses of public officers, employees, and authorized persons.

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[19] Fla. Stat. § 112.061(7)(d)1. (2005) (Authorized by the agency head or her or his designee).
[20] *Id.* (As determined by the agency head).
[21] Ch. 94-139, Laws of Fla.
[22] Beginning January 1, 2006, the business standard mileage rate for the use of a vehicle is 44.5 cents per mile. This new rate for business miles compares to a rate of 40.5 cents per mile for the first eight months of 2005. In September 2005, the IRS made a special one-time adjustment for the last four months of 2005, raising the rate for business miles to 48.5 cents per mile in response to a sharp increase in gas prices. Internal Revenue Service, IRS Announces 2006 Standard Mileage Rates, at http://www.irs.gov/newsroom/article/0,,id=151226,00.html (last visited Jan. 12, 2006).
[23] Ch. 2003-125, Laws of Fla.
[24] *Id.* The "whereas" clauses several factors in the adoption of this exemption: the authority granted by the Municipal Home Rule Powers Act, the manner in which local governments relied on Attorney General Opinion 74-18, and the potential impact of Attorney General Opinion 2003-01.

Section 2: Provides appropriation of $8.4 million from General Revenue and $12.7 million from trust funds.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate a revenue source of state government.

2. Expenditures:

   With the increases to the per diem, subsistence, and mileage reimbursement rates, this bill will increase the expenditures of state government. The increase is estimated to be $8.4 million from General Revenue and $12.7 million from trust funds annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate a revenue source of local governments.

2. Expenditures:

   This bill does not appear to create, modify, amend, or eliminate an expenditure of local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill provides recurring appropriations for the agencies in the amounts of $8.4 million from General Revenue and $12.7 million from trust funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.[25] This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   There do not appear to be any other constitutional issues.

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[25] Counties or county constitutional officers are not required to pay the higher per diem and subsistence rates provided by this bill. Rather, counties and county constitutional officers may establish varying rates as long as those rates are not less than the current statutory rates.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its meeting on February 22, 2006, the Governmental Operations Committee adopted an amendment to the proposed House combined bill which set the per diem, subsistence, and mileage rates.

On March 30, 2006, the Fiscal Council adopted an amendment providing appropriations to be distributed to the agencies for the increased costs resulting from the change in the travel reimbursement rates.

CHAMBER ACTION

The Fiscal Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to per diem and travel expenses; amending s. 112.061, F.S.; revising per diem, subsistence, and mileage rates for purposes of reimbursement of travel expenses of public officers, employees, and authorized persons; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1), paragraphs (e) and (g) of subsection (3), paragraph (c) of subsection (5), subsection (6), paragraph (d) of subsection (7), and subsections (11) and (14) of section 112.061, Florida Statutes, are amended to read:

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.--

(1) LEGISLATIVE INTENT.--To prevent ~~There are~~ inequities, conflicts, inconsistencies, and lapses in the numerous laws regulating or attempting to regulate travel expenses of public

officers, employees, and authorized persons in the state, ~~,~~ it is the intent of the Legislature:

(a) To ~~remedy same and to~~ establish standard travel reimbursement ~~uniform maximum~~ rates, procedures, and limitations, with certain justifiable exceptions and exemptions, applicable to all public officers, employees, and authorized persons whose travel is authorized and ~~expenses are~~ paid by a public agency.

(b) To preserve the standardization ~~and uniformity~~ established by this law:

1. The provisions of this section shall prevail over any conflicting provisions in a general law, present or future, to the extent of the conflict; but if any such general law contains a specific exemption from this section, including a specific reference to this section, such general law shall prevail, but only to the extent of the exemption.

2. The provisions of any special or local law, present or future, shall prevail over any conflicting provisions in this section, but only to the extent of the conflict.

(3) AUTHORITY TO INCUR TRAVEL EXPENSES.--

(e) The agency head, or a designated representative, may pay by advancement or reimbursement, or a combination thereof, the costs of per diem of travelers ~~and authorized persons~~ for foreign travel at the current rates as specified in the federal publication "Standardized Regulations (Government Civilians, Foreign Areas)" and incidental expenses as provided in this section.

(g) The secretary of the Department of Health or a designee may authorize travel expenses incidental to the rendering of medical services for and on behalf of clients of the Department of Health. The Department of Health may establish rates lower than the rate ~~maximum~~ provided in this section for these travel expenses.

(5) COMPUTATION OF TRAVEL TIME FOR REIMBURSEMENT.--For purposes of reimbursement and methods of calculating fractional days of travel, the following principles are prescribed:

~~(c) For the 2005-2006 fiscal year only and notwithstanding the other provisions of this subsection, for Class C travel, a state traveler shall not be reimbursed on a per diem basis nor shall a traveler receive subsistence allowance. This paragraph expires July 1, 2006.~~

(6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.--For purposes of reimbursement rates and methods of calculation, per diem and subsistence allowances are provided as follows ~~divided into the following groups and rates~~:

(a) All travelers shall be allowed for subsistence when traveling to a convention or conference or when traveling within or outside the state in order to conduct bona fide state business, which convention, conference, or business serves a direct and lawful public purpose with relation to the public agency served by the person attending such meeting or conducting such business, either of the following for each day of such travel at the option of the traveler:

1. Seventy-five ~~Fifty~~ dollars per diem; or

2. If actual expenses exceed $75 ~~$50~~, the amounts permitted in paragraph (b) for subsistence ~~meals~~, plus actual expenses for lodging at a single-occupancy rate to be substantiated by paid bills therefor.

When lodging or meals are provided at a state institution, the traveler shall be reimbursed only for the actual expenses of such lodging or meals, not to exceed the maximum provided for in this subsection.

(b) All travelers shall be allowed the following amounts for subsistence while on Class C travel on official business as provided in paragraph (5)(b):

1. Breakfast....$5 ~~$3~~

2. Lunch....$11 ~~$6~~

3. Dinner....$19 ~~$12~~

(c) No one, whether traveling out of state or in state, shall be reimbursed for any meal or lodging included in a convention or conference registration fee paid by the state.

~~(d) For the 2005-2006 fiscal year only and notwithstanding the other provisions of this subsection, for Class C travel, a state traveler shall not be reimbursed on a per diem basis nor shall a traveler receive subsistence allowance. This paragraph expires July 1, 2006.~~

(7) TRANSPORTATION.--

(d)1. The use of privately owned vehicles for official travel in lieu of publicly owned vehicles or common carriers may be authorized by the agency head or his or her designee. Whenever travel is by privately owned vehicle:~~,~~

a. The traveler shall be entitled to a mileage allowance at a fixed rate of 44.5 ~~25~~ cents per mile; ~~for state fiscal year 1994-1995 and 29 cents per mile thereafter~~ or

b. The traveler shall be entitled to the common carrier fare for such travel if~~, as~~ determined by the agency head to be more economical.

2. Reimbursement for expenditures related to the operation, maintenance, and ownership of a vehicle shall not be allowed when privately owned vehicles are used on public business and reimbursement is made pursuant to this paragraph, except as provided in subsection (8).

3.~~2.~~ All mileage shall be shown from point of origin to point of destination and, when possible, shall be computed on the basis of the current map of the Department of Transportation. Vicinity mileage necessary for the conduct of official business is allowable but must be shown as a separate item on the expense voucher.

(11) TRAVEL AUTHORIZATION AND VOUCHER FORMS.--

(a) Authorization forms.--The Department of Financial Services shall furnish a uniform travel authorization request form which shall be used by all state officers, ~~and~~ employees, and authorized persons when requesting approval for the performance of travel to a convention or conference. The form shall include, but not be limited to, provision for the name of each traveler, purpose of travel, period of travel, estimated cost to the state, and a statement of benefits accruing to the state by virtue of such travel. A copy of the program or agenda of the convention or conference, itemizing registration fees and

any meals or lodging included in the registration fee, shall be attached to, and filed with, the copy of the travel authorization request form on file with the agency. The form shall be signed by the traveler and by the traveler's supervisor stating that the travel is to be incurred in connection with official business of the state. The head of the agency or his or her designated representative shall not authorize or approve such request in the absence of the appropriate signatures. A copy of the travel authorization form shall be attached to, and become a part of, the support of the agency's copy of the travel voucher.

(b) Voucher forms.--

1. The Department of Financial Services shall furnish a uniform travel voucher form which shall be used by all state officers, ~~and~~ employees, and authorized persons when submitting travel expense statements for approval and payment. No travel expense statement shall be approved for payment by the Chief Financial Officer unless made on the form prescribed and furnished by the department. The travel voucher form shall provide for, among other things, the purpose of the official travel and a certification or affirmation, to be signed by the traveler, indicating the truth and correctness of the claim in every material matter, that the travel expenses were actually incurred by the traveler as necessary in the performance of official duties, that per diem claimed has been appropriately reduced for any meals or lodging included in the convention or conference registration fees claimed by the traveler, and that the voucher conforms in every respect with the requirements of

this section. The original copy of the executed uniform travel authorization request form shall be attached to the uniform travel voucher on file with the respective agency.

2. Statements for travel expenses incidental to the rendering of medical services for and on behalf of clients of the Department of Health shall be on forms approved by the Department of Financial Services.

(14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS, DISTRICT SCHOOL BOARDS, AND SPECIAL DISTRICTS.--

(a) The following entities may establish rates that vary from the per diem rate provided in paragraph (6)(a), the subsistence rates provided in paragraph (6)(b), or the mileage rate provided in paragraph (7)(d) if those rates are not less than the statutorily established rates that are in effect for the 2005-2006 fiscal year ~~Rates that exceed the maximum travel reimbursement rates for nonstate travelers specified in paragraph (6)(a) for per diem, in paragraph (6)(b) for subsistence, and in subparagraph (7)(d)1. for mileage may be established by~~:

1. The governing body of a county by the enactment of an ordinance or resolution;

2. A county constitutional officer, pursuant to s. 1(d), Art. VIII of the State Constitution, by the establishment of written policy;

3. The governing body of a district school board by the adoption of rules; or

4. The governing body of a special district, as defined in s. 189.403(1), except those special districts that are subject to s. 166.021(10), by the enactment of a resolution.

(b) Rates established pursuant to paragraph (a) must apply uniformly to all travel by the county, county constitutional officer and entity governed by that officer, district school board, or special district.

(c) Except as otherwise provided in this subsection, counties, county constitutional officers and entities governed by those officers, district school boards, and special districts, other than those subject to s. 166.021(10), remain subject to the requirements of this section.

Section 2. For the 2006-2007 fiscal year, the sum of $8.4 million in recurring funds from the General Revenue Fund and $12.7 million in recurring funds from Trust Funds are appropriated in Administered Funds for distribution to the agencies to administer the provisions of this act.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7145 CS PCB DS 06-01 Seaport Security and Access Control/Credentialing
SPONSOR(S): Domestic Security Committee and Adams
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Domestic Security Committee	8 Y, 0 N	Newton	Newton
1) Criminal Justice Committee	5 Y, 0 N, w/CS	Cunningham	Kramer
2) Transportation Committee	11 Y, 0 N	Pugh	Miller
3) State Administration Council		Newton	Bussey
4)			
5)			

SUMMARY ANALYSIS

HB 7145 CS establishes security area designations and access requirements for seaports. These designations allow seaport directors to utilize specific restrictive area and non-restrictive area designations in the seaport's security plan and credentialing program.

The bill establishes a five-year recurring review of seaport security plans by the seaport director with the assistance of the Regional Domestic Security Task Force and the United States Coast Guard. Additionally, the bill provides for the use of a risk assessment by seaport directors in creating a security plan and determining the use of counter terrorism devices and initiatives. It amends the waiver process and establishes an alternative means of compliance to the statewide minimum standards for seaport security. The bill also creates a prohibition on concealed weapons inside a seaport's restricted areas.

HB 7145 CS establishes an 11-member Seaport Security Standards Advisory Council under the Office of Drug Control for the purposes of reviewing the statewide seaport security standards for applicability to current narcotics and terrorist threats.

The bill establishes a certification program for Seaport Security Officers and allows seaport authorities and governing boards to require security officers working on a seaport to receive additional training and designation as a certified Seaport Security Officer.

Additionally, the bill provides authority to create a Seaport Law Enforcement Agency at the discretion of the seaport director. A seaport director is not required to create such a force if the seaport's security requirements are being met by other means. This provision allows the seaport director the choice of creating the seaports own internal law enforcement agency. It also establishes a maritime domain awareness training program for security awareness training of all seaport workers.

HB 7145 CS also authorizes certified Seaport Security Officers to detain, based on probable cause, persons believed to be trespassing in designated seaport restricted access areas pending the immediate arrival of a law enforcement officer, and provides to those officers limited protection from liability for false arrest, false imprisonment, and unlawful detention. The bill makes it a felony to willingly and knowingly attempt to or obtain a seaport security identification card using false information.

The bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

- HB 7145 CS authorizes governmental seaport authorities and local governments operating seaports to require that certain private security forces working at the port receive additional training and certification.
- But the bill also gives greater latitude to the seaport directors in the establishment of security plans and the creation and use of seaport security forces.

Safeguard Individual Liberty

- The bill grants the authority to certified Seaport Security Officers to take certain trespass suspects into custody and detain them under specified circumstances. Security guards currently enjoy no such authority to detain trespass suspects.

Maintain Public Security

- The bill provides for more comprehensive seaport security planning through the use of risk analysis, review and inspection. The bill allows seaport directors flexibility in security plan design and security force composition.
- Additionally, the bill authorizes governmental seaports to require private and other security forces to have additional training that is specific to the seaport security environment. Authorizes certain private and other seaport security forces to take trespass suspects into custody proactively and detain them until a law enforcement officer arrives. Currently, security guards are only authorized to react in a limited way when confronted.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Security Area Designations

Currently, a seaport director may designate any or all of his or her seaport as a restricted area. This designation has a direct effect on the seaport access credentialing process. The law requires all persons working on a port and having access to a restricted area to submit to a detailed background check. These security checks are often costly and time consuming. Currently, there are no provisions in the law to allow seaport directors latitude in designating areas as unrestricted. Area designations have long been tools for enforcement of restricted or off limits zones on a seaport. The ambiguity that exists in area designation protocols lends itself to increased cost to ports in worker credentialing and places limitations on seaport directors in security planning.

Seaport Security Standards and Waivers

Seaports subject to this bill are required to review their security plan once every four years and are subject to inspection by the Department of Law Enforcement on a random and annual basis. Security plans developed by the seaports must conform to the standards set forth in the Office of Drug Control, Minimum Security Standards for Florida Seaports.

In general, the Office of Drug Control and the Department of Law Enforcement may modify or waive the standards as contained in the statewide minimum standards for seaport security.

Review of the Statewide Minimum Standards for Seaport Security

There are no provisions for review or modification of the statewide minimum standards for seaport security contained in s. 311.12, F.S.

Seaport Security Officer Training and Certification

Prior to 2000, seaport security in Florida was focused on supply-chain theft prevention to protect the commercial interests of seaport tenants. Since 2001, considerable effort and resources have been devoted to improving physical security and security operations at Florida's commercial seaports to meet the ongoing concerns about drug trafficking and the emerging threat of terrorism. Florida pursued a successful strategy for seaport security improvements through grant funding now administered by the Transportation Security Administration of the Department of Homeland Security. However, these federal grants are restricted to pre-approved physical infrastructure improvements.

Improvements in security operations at Florida's 14 seaports have been primarily funded through the Florida Seaport Transportation Economic Development Council (FSTED) and the commercial seaports individually. In order to accomplish these operational security improvements, the seaports have voluntarily foregone needed economic development infrastructure projects. Concern for long-term funding of operational security costs prompted a review of operational structures at several public seaports by the Senate Domestic Security Committee.

The Florida Senate Interim Project Report 2005-144, Seaport Security, November 2004, describes and documents the above situation and identifies several possible methods to reduce or mitigate operational security costs including the training and certification of seaport security officers.

As a general rule, private security personnel working on Florida's public seaports are required to maintain at a minimum, a CLASS D private security officer license,[1] including at least 40 hours of professional education completed at a school or training facility licensed by the Florida Department of Agriculture and Consumer Services. At least one port employs CLASS G security officers as a part of its private security force. These officers are permitted to carry firearms and must undergo additional training requirements prior to obtaining a state CLASS G license.[2]

The state's two county-operated ports -- Port Everglades and Port of Miami -- appear to have operational security costs which are substantially higher than other public ports. The extensive use of government law enforcement employees, with the inherent costs of salary and benefits associated with those personnel may be a driving factor in those higher costs. In fact, ports using a blend of sworn law enforcement, non-sworn law enforcement, and private security forces had security operating costs of less than half that of the county operated facilities. One factor making it difficult to determine the cost of security at seaports is the widely differing operational and geographic scope of each port. The two county-operated ports are the largest operationally, and thus have more activity requiring security presence on a daily basis. However, the extreme differences in security costs between Port Everglades and Port of Miami, as compared to Jaxport and Port of Tampa which are operated by independent special districts, point to the method of service delivery being the reason for higher costs.

The use of some form of blended security force, either through additional port security officers holding appropriate state licenses, or through contracted services provided by licensed personnel from private security firms might provide some reduction in costs for ports now using county personnel. For example, Port Everglades, through its contract with the Broward County Sheriff's Office, pays overtime costs to non-sworn personnel (CSAs) to stand guard post assignments in cruise terminals when ships are in port. A private security officer, under the direction of sworn law enforcement, could perform this same duty under an hourly contract, thus saving the port the overhead costs of salary, benefits, administration and supervision. A focused review of the use of sworn and non-sworn law enforcement personnel by each public seaport could result in cost savings through a different proportion of sworn and non-sworn government and private personnel without the loss of appropriate levels of security.

Proper training of private security personnel employed to protect Florida's public seaports is an ongoing concern. Prevention, protection and response procedures on seaports are quite unique and require

[1] s. 493.6303, F.S.
[2] s. 493.6115, F.S.

specialized education and training. While CLASS D and CLASS G security officers must receive specialized patrol and firearms training, respectively, there is no required additional training, nor any additional specialized seaport security certification or separate class of security officers that have completed such training, recognized by the State of Florida.

Seaport Security Forces

Seaports in Florida utilize a combination of force structures to meet their human capital security needs. A contract between a seaport and local law enforcement agencies is a very popular approach to solving the security needs of seaports. Another is to contract with a private firm for security services. Still other seaports use a variation of employed labor and contracts to fulfill this requirement. Although seaports have the authority to contract for security service they are not authorized by statute to establish and maintain a seaport law enforcement agency under the sole control of the seaport director.

The Power to Detain

Florida law authorizes a law enforcement officer, a merchant, a farmer, or their employee or agent, who has probable cause to believe that a retail theft, farm theft, or trespass, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody to, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time.[3] State law further provides that in the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, and a law enforcement officer shall be called to the scene immediately. The law also is applicable to transit-fare evasion with respect to detention. This statute provides that the taking of a person into custody does not, by itself, render the person taking the suspect into custody criminally or civilly liable for false arrest, false imprisonment or unlawful detention.

Additionally, Florida law currently authorizes the chief administrative officer of a school, who has probable cause to believe that a person is trespassing upon school grounds, to take the person into custody and detain him or her in a reasonable manner for a reasonable amount of time pending the arrival of a law enforcement officer. The taking of the person into custody does not, by itself, render the chief administrative officer criminally or civilly liable for false arrest, false imprisonment or unlawful detention.[4]

No similar authorization to detain exists in Florida law in the case of a trespass offender found in a restricted area on a seaport. No private seaport security officer may currently detain such a person pending the arrival of a law enforcement officer.

Security Identification Card

State or federal law does not provide any penalty for the use of false information to obtain a seaport security identification card.

Effect of Proposed Changes

Security Area Designation

HB 7145 CS creates s. 311.111, F.S., detailing unrestricted and restricted access areas on seaports. Area designations are as follows: unrestricted, public access areas; restricted, public access areas; restricted access areas and secured, restricted access areas. By creating these categories of access areas, seaport directors must incorporate these defined areas into the seaport's security plan. When designating areas as unrestricted, seaport directors may not require the full security background checks currently mandated of persons working on seaport property. Persons working solely in unrestricted, public access areas will be required to have identification as required by the seaport director. This allows for the reduction in credentialing costs to the seaports.

[3] s. 812.015(3)(a), F.S.
[4] s. 810.097, F.S.

Seaport Security Standards and Waivers

HB 7145 CS aligns the requirements of the seaport to submit a security plan to the Department Law Enforcement for review with the federal requirement to submit a seaport security plan to the U.S. Coast Guard on a five-year schedule. Seaport directors are required to perform risk assessments and incorporate the findings of the assessment into the seaports security plan. This will provide the seaport with current review of the security risks to the seaport on a continual basis. The Department of Law Enforcement is required to annually inspect the seaports and, within 30 days of that inspection, report its findings to the U.S. Coast Guard and others. The inspection of the seaports by the Department of Law Enforcement shall be based solely on the criteria established in Florida's statewide minimum seaport security standards and the standards as set forth in the federal Maritime Transportation Security Act. Other comments included in the annual inspection report are considered as recommendations and should be incorporated in the seaport's security plans.

Any findings disputed by the seaport related to the statewide minimum seaport security standards contained in the Department of Law Enforcement report will be submitted to the Florida Domestic Oversight Council for review and mediation. The decision of the Council is considered final. This appeals process provides the seaports with a redress procedure not previously granted.

A waiver process was previously in place for the modification of the statewide minimum seaport security standards. This process was underutilized and provides the seaports with no mediation should the Office of Drug Control and the Department of Law Enforcement not grant a waiver to the ports on the standards as written. HB 7145 CS creates a procedure for seaports to request the Domestic Security Oversight Council to review the waiver request should the prior agencies fail to approve the waiver request. The decision of the Council is considered final.

Review of the Statewide Minimum Standards for Seaport Security

HB 7145 CS creates an 11-member Seaport Security Standards Advisory Council under the Office of Drug Control for the purpose of reviewing and recommending modifications to the statewide minimum seaport security standards. The Advisory Council shall meet at least once every five years and report its findings and recommendations to the Governor, the Speaker of the Florida House of Representatives and the President of the Florida Senate. The Advisory Council's members are:

- Two seaport directors appointed by the Governor.
- Two seaport security directors appointed by the Governor.
- One designee from FDLE.
- The director of the Office of Motor Carrier Compliance within the state Department of Transportation.
- One designee from the Florida Attorney General's Office.
- One designee from the state Department of Agriculture and Consumer Services.
- One designee from the Office of Tourism, Trade, and Economic Development.
- A designee from the Office of Drug Control, who shall serve as the chair.
- A representative of the U.S. Coast Guard as an ex officio member.

Seaport Security Officer Training and Certification

The bill creates s. 311.121, F.S., allowing each seaport authority or governing board subject to statewide minimum seaport security standards to require security officers working on the seaport to undergo additional training and become certified as a Seaport Security Officer. The bill establishes eligibility criteria to undergo training or demonstrate equivalency qualifications for certification as a Seaport Security Officer. In addition, it grants authority to evaluate and determine equivalency to the Department of Agriculture and Consumer Services Division of Licensing. The bill also requires certified Seaport Security Officers to undergo at least eight hours of continuing education per Class D licensing cycle in order to maintain certification as a Seaport Security Officer. Failure to meet such requirements results in lapse of the certificate, and reexamination, at a minimum, is required to regain the certification.

The bill provides for a steering committee to establish and periodically review a training curriculum for Seaport Security Officers and for continuing education of those officers. The curriculum must conform to or exceed the requirements of the appropriate model courses for seaport personnel approved by the federal Maritime Administration. Additionally, the bill assigns the Department of Education the responsibility for implementing the steering committee curriculum recommendations and requires instructors conducting Seaport Security Officer training to hold a CLASS D license pursuant to s. 493.6301, F.S. The bill provides that an organization applying for authorization to teach the curriculum may apply to become a licensed school pursuant to s. 493.6304, F.S.

The bill also requires a candidate for certification to pass a proficiency examination and establishes criteria for maintaining valid certification. In addition, the bill provides for the administration of the certification process and notification to the Division of Licensing of the Department of Agriculture and Consumer Services that a certificate has been issued.

Seaport Security Forces
The bill creates s. 311.122, F.S., authorizing the creation of a Seaport Law Enforcement Agency by the seaport director to satisfy the seaport's security force requirements.

The Power to Detain
HB 7145 CS authorizes a seaport security officer holding a CLASS D or CLASS G license and a Seaport Security Officer certificate, who is acting as an agent of the seaport's federally designated Facility Security Officer (FSO), to detain a person believed to be trespassing in a designated seaport restricted access area until a law enforcement officer arrives on scene. Such certified Seaport Security Officer is required to call immediately for the assistance of a law enforcement officer upon detaining a suspect, and he or she may only take the suspect into custody and detain such suspect in a reasonable manner for a reasonable length of time. In addition, the bill provides protection for the Seaport Security Officer from criminal or civil liability for false arrest, false imprisonment, and unlawful detention.

Under current Florida law, the Seaport Security Officer would be entitled to protection from liability only if the period of custodial detention lasts no longer than the period of time for which the officer has probable cause to take into custody and detain. Furthermore, if a judicial determination is made that the Seaport Security Officer detained a suspect in an unreasonable manner or for an unreasonable period of time, protection from liability may be lost.

Security Identification Card
The bill creates s. 817.021, F.S., making the use of false information to attempt to or obtain a seaport security identification card a third-degree felony, punishable by a maximum 5 years in prison and a $5,000 fine. This provides a penalty not included under previous statutes.

C. SECTION DIRECTORY:

Section 1. Creates s. 311.111, F.S., requiring certain seaports to designate and identify security area designations, access requirements, and security enforcement authorizations on seaport premises.

Section 2. Amends s. 311.12, F.S., revising the purpose of seaport security plans; requiring periodic plan revisions; requiring plans to be inspected by the Office of Drug Control and the Department of Law Enforcement; providing requirements with respect to protection standards in specified restricted areas; requiring delivery of the plan to specified entities; requiring the Department of Law Enforcement to inspect seaports to determine if all security measures are in compliance with the seaport security standards; requiring a report; providing procedures and requirements with respect to waiver of any physical facility requirement; providing a penalty for possession of a concealed weapon on seaport property; requiring periodic review of statewide minimum standards for seaport security; requiring the Office of Drug Control to convene a Seaport Security Standards Advisory Council to review the statewide minimum standards.

Section 3. Creates s. 311.121, F.S., requiring certain seaports to impose specified requirements for certification as a seaport security officer; creating the Seaport Security Officer Qualification, Training, and Standards Coordinating Council under the Department of Law Enforcement; requiring the Department of Education to develop initial and continuing education and training programs for seaport security officer certification; providing requirements and procedures with respect to such training programs; providing requirements for renewal of inactive or revoked certification.

Section 4. Creates s. 311.122, F.S., authorizing each seaport to create a seaport law enforcement agency; providing requirements of such an agency; providing requirements with respect to the composition of agency personnel; providing powers of seaport law enforcement agency officers and seaport security officers.

Section 5. Creates s. 311.123, F.S., providing for the creation of a maritime domain security awareness training program; providing purpose of the program; providing program training curriculum requirements.

Section 6. Creates s. 311.124, F.S., providing authority of seaport security officers to detain persons suspected of trespassing; providing immunity from specified criminal and civil liability.

Section 7. Creates s. 817.021, F.S., providing a criminal penalty for willfully and knowingly providing false information in obtaining or attempting to obtain a seaport security identification card.

Section 8. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   See "Fiscal Comments."

D. FISCAL COMMENTS:

HB 7145 CS does not incur any additional costs to Florida's seaports. The seaport operators are given additional tools to reduce expenditures by designating unrestricted areas, lowering credentialing costs to tenants, and basing the seaport security inspection process solely on the standards as set forth in the statewide minimum seaport security standards and the Maritime Transportation Security Act. Any

additional cost to seaports may come in the form of non-mandatory security recommendations by the Department of Law Enforcement that should be incorporated by the seaports.

The bill is permissive to seaport authorities and governing boards with regard to requiring certified Seaport Security Officers. However, there may be potential cost savings to governmental seaports given the ability to design an optimum security force mix of sworn and non-sworn law enforcement officers and certified Seaport Security Officers.

For governmental seaports electing to require Seaport Security Officer Certification, there will be an undetermined cost associated with providing additional training for certification. This cost will likely be borne by the individual applicant seeking upgraded skills and certification. The impact to private sector security agency employers seeking higher skill level security officers is also currently unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because HB 7145 CS does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No additional grant of rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

An amendment adopted March 8, 2006, by the Domestic Security Committee to the original PCB DS 06-01 promotes the "safety and security of residents and visitors of the state and promotes the flow of legitimate trade and travel" in regard to a seaport's security plan.

On March 28, 2006, the Criminal Justice Committee adopted a strike-all amendment that made technical changes to the bill and reported the bill favorably with committee substitute.

CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to seaport security; creating s. 311.111, F.S.; requiring each seaport authority or governing board of a seaport that is subject to the statewide minimum seaport security standards to designate and identify security area designations, access requirements, and security enforcement authorizations on seaport premises and in seaport security plans; providing that any part of a port's property may be designated as a restricted access area under certain conditions; amending s. 311.12, F.S.; revising purpose of security plans maintained by seaports; requiring periodic plan revisions; requiring plans to be inspected by the Office of Drug Control and the Department of Law Enforcement based upon specified standards; providing requirements with respect to protection standards in specified restricted areas; requiring delivery of the plan to specified entities; requiring the Department of Law Enforcement to inspect every seaport within the state to determine if all security measures

adopted by the seaport are in compliance with seaport security standards; requiring a report; authorizing seaports to appeal findings in a Department of Law Enforcement inspection report; requiring the Domestic Security Oversight Council to establish a review process; providing procedures and requirements with respect to waiver of any physical facility requirement or other requirement contained in the statewide minimum standards for seaport security; providing a penalty for possession of a concealed weapon while on seaport property in a designated restricted area; requiring periodic review of the statewide minimum standards for seaport security to be conducted under the Office of Drug Control within the Executive Office of the Governor; requiring the Office of Drug Control to convene a Seaport Security Standards Advisory Council to review the statewide minimum standards for seaport security with respect to current narcotics and terrorism threats to Florida's seaports; providing membership, terms, organization, and meetings of the council; creating s. 311.121, F.S.; providing legislative intent with respect to the employment by seaports of certified law enforcement officers and certified private security officers; providing authority of seaports and requirements of the Department of Law Enforcement with respect to such intent; requiring the authority or governing board of each seaport that is subject to statewide minimum seaport security standards to impose specified requirements for certification as a seaport

security officer; creating the Seaport Security Officer Qualification, Training, and Standards Coordinating Council under the Department of Law Enforcement; providing membership and organization of the council; providing terms of members; providing duties and authority of the council; requiring the Department of Education to develop curriculum recommendations and specifications of the council into initial and continuing education and training programs for seaport security officer certification; providing requirements and procedures with respect to such training programs; providing requirements and procedures with respect to certification as a seaport security officer; providing requirements for renewal of inactive or revoked certification; creating s. 311.122, F.S.; authorizing each seaport in the state to create a seaport law enforcement agency for its facility; providing requirements of an agency; requiring certification of an agency; providing requirements with respect to the composition of agency personnel; providing powers of seaport law enforcement agency officers and seaport security officers; creating s. 311.123, F.S.; providing for the creation of a maritime domain security awareness training program; providing purpose of the program; providing program training curriculum requirements; creating s. 311.124, F.S.; providing authority of seaport security officers to detain persons suspected of trespassing in a designated restricted area of a seaport; providing immunity from specified criminal or civil

liability; creating s. 817.021, F.S.; providing a criminal penalty for willfully and knowingly providing false information in obtaining or attempting to obtain a seaport security identification card; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 311.111, Florida Statutes is created to read:

311.111 Security area designations; access requirements; authority.--Each seaport authority or governing board of a seaport identified in s. 311.09 that is subject to the statewide minimum seaport security standards in s. 311.12 shall clearly designate in seaport security plans and clearly identify with appropriate signs and markers on the premises of a seaport the following security area designations, access requirements, and corresponding security enforcement authorizations, which may include, but not be limited to, clear notice of the prohibition on possession of concealed weapons and other contraband material on the premises of the seaport:

(1) UNRESTRICTED PUBLIC ACCESS AREA.--An unrestricted public access area of a seaport is open to the general public without a seaport identification card other than that required as a condition of employment by a seaport director.

(2) RESTRICTED PUBLIC ACCESS AREA.--A restricted public access area of a seaport is open to the public for a specific purpose via restricted access and open to individuals working on the seaport, seaport employees, or guests who have business with

the seaport. Any person found in these areas without the proper level of identification card is subject to the trespass provisions of ss. 810.08 and 810.09 and this chapter. All persons and objects in these areas are subject to search by an on-duty sworn state-certified law enforcement officer, a Class D seaport security officer certified under Maritime Transportation Security Act guidelines and s. 311.121, or an employee of the seaport security force certified under the Maritime Transportation Security Act guidelines and s. 311.121.

(3) RESTRICTED ACCESS AREA.--A restricted access area of a seaport is open only to individuals working on the seaport, seaport employees, or guests who have business with the seaport. Any person found in these areas without the proper level of identification card is subject to the trespass provisions of ss. 810.08 and 810.09 and this chapter. All persons and objects in these areas are subject to search by an on-duty sworn state-certified law enforcement officer, a Class D seaport security officer certified under Maritime Transportation Security Act guidelines and s. 311.121, or an employee of the seaport security force certified under the Maritime Transportation Security Act guidelines and s. 311.121.

(4) SECURED RESTRICTED ACCESS AREA.--A secured restricted access area of a seaport is open only to individuals working on the seaport, seaport employees, or guests who have business with the seaport and is secured at each point of access at all times by a Class D seaport security officer certified under the Maritime Transportation Security Act, a sworn state-certified law enforcement officer, or an employee of the port's security

force certified under the Maritime Transportation Security Act. Any person found in these areas without the proper level of identification card is subject to the trespass provisions of ss. 810.08 and 810.09 and this chapter. All persons and objects in these areas are subject to search by an on-duty Class D seaport security officer certified under Maritime Transportation Security Act guidelines and s. 311.121, an on-duty sworn state-certified law enforcement officer, or an employee of the seaport security force certified under the Maritime Transportation Security Act guidelines and s. 311.121.

During a period of high terrorist threat level designated by the United States Department of Homeland Security or the Florida Department of Law Enforcement or during an emergency declared by the seaport security director of a port due to events applicable to that particular port, the management or controlling authority of the port may temporarily designate any part of the port property as a restricted access area or a secured restricted access area. The duration of such designation is limited to the period in which the high terrorist threat level is in effect or port emergency exists. Subsections (3) and (4) do not limit the power of the managing or controlling authority of a seaport to designate any port property as a restricted access area or a secured restricted access area as otherwise provided by law.

Section 2. Subsection (2) and paragraph (b) of subsection (4) of section 311.12, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

311.12 Seaport security standards; inspections; compliance; appeals.--

(2)(a) Each seaport identified in s. 311.09 shall maintain a security plan to provide for a secure seaport infrastructure specific to that seaport that shall promote the safety and security of the residents and visitors of the state and promote the flow of legitimate trade and travel. Commencing January 1, 2007, and every 5 years thereafter, the seaport director of each seaport, with the assistance of the Regional Domestic Security Task Force and in conjunction with the United States Coast Guard, shall revise the seaport security plan based on the results of continual, quarterly assessments by the seaport director of security risks and possible risks related to terrorist activities and relating to the specific and identifiable needs of the seaport which assures that the seaport is in substantial compliance with the statewide minimum standards established pursuant to subsection (1).

(b) Each plan adopted or revised pursuant to this subsection shall be inspected ~~must be reviewed and approved~~ by the Office of Drug Control and the Department of Law Enforcement based solely upon the standards as set forth under the Maritime Transportation Security Act as revised July 2003, 33 C.F.R. s. 105.305, and the statewide minimum standards established pursuant to subsection (1). All such seaports shall allow unimpeded access by the Department of Law Enforcement to the affected facilities for purposes of plan or compliance inspections or other operations authorized by this section.

(c) Each seaport security plan shall ~~may~~ establish unrestricted and restricted access areas within the seaport consistent with the requirements of the statewide minimum standards and the provisions of s. 311.111. In such cases, a Uniform Port Access Credential Card, authorizing restricted-area access, shall be required for any individual working within or authorized to regularly enter a restricted access area and the requirements in subsection (3) relating to criminal history checks and employment restrictions shall be applicable only to employees or other persons working within or authorized to regularly enter a restricted access area. Every seaport security plan shall set forth the conditions and restrictions to be imposed upon others visiting the port or any restricted access area sufficient to provide substantial compliance with the statewide minimum standards. As determined by the seaport director's most current quarterly risk assessment report, any restricted access area with a potential human occupancy of 50 persons or more, any cruise terminal, or any business operation that is adjacent to an unrestricted public access area shall be protected from the most probable and creditable terrorist threat to human life by the use of like or similar standards as those set forth in the United States Department of Defense Minimum Antiterrorism Standard for Buildings, Unified Facilities Criteria 4-010-0.

(d) Within 30 days after the completion of the seaport's security plan inspection by the Department of Law Enforcement, it shall be delivered to the United States Coast Guard, the

Regional Domestic Security Task Force, and the Domestic Security Oversight Council.

(e) It is the intent of the Legislature that Florida's seaports adhere to security practices that are consistent with risks assigned to each seaport through the risk assessment process established in this section. Therefore, the Department of Law Enforcement shall inspect every seaport within the state to determine if all security measures adopted by the seaport are in compliance with the standards set forth in this chapter and shall submit the department's findings within 30 days after the inspection in a report to the Domestic Security Oversight Council and the United States Coast Guard for review, with requests to the Coast Guard for any necessary punitive action.

(f) Notwithstanding the provisions of chapter 120, a seaport may appeal to the Domestic Security Oversight Council for review and mediation the findings in any Department of Law Enforcement inspection report as they relate to the requirements of this section. The Domestic Security Oversight Council shall establish a review process and may review only those findings under this section that are in specific dispute by the seaport. In reviewing the disputed findings, the council may concur in the findings of the department or the seaport or may recommend corrective action to the seaport. Findings of the council shall be considered final.

(4)

(b) The Office of Drug Control and the executive director of the Department of Law Enforcement may modify or waive any physical facility requirement or other requirement contained in

the statewide minimum standards for seaport security upon a finding or other determination that the purposes of the standards have been reasonably met or exceeded by the seaport requesting the modification or waiver. Alternate means of compliance may not in any way diminish the safety or security of the seaport and shall be verified through an extensive risk analysis conducted by the port director. Waivers shall be submitted in writing with supporting documentation to the Office of Drug Control and the Department of Law Enforcement. The Office of Drug Control and the Department of Law Enforcement shall have 90 days to jointly grant the waiver or reject the waiver in whole or in part. Waivers not granted within 90 days or jointly rejected shall be submitted by the seaport to the Domestic Security Oversight Council for consideration. The Domestic Security Oversight Council shall grant the waiver or reject the waiver in whole or in part. The decision of the Domestic Security Oversight Council shall be considered final. Waivers submitted for standards established under s. 311.122(3) may not be granted for percentages below 10 percent. Such modifications or waivers shall be noted in the annual report submitted by the Department of Law Enforcement pursuant to this subsection.

(7) Any person who has in his or her possession a concealed weapon, or who operates or has possession or control of a vehicle in or upon which a concealed weapon is placed or stored, while in a designated restricted area on seaport property commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This subsection does

not apply to active-duty certified federal or state law enforcement personnel.

(8)(a) Commencing on January 15, 2007, and at least every 5 years thereafter, a review of the statewide minimum standards for seaport security as contained in paragraph (1)(a) shall be conducted under the Office of Drug Control within the Executive Office of the Governor by the Seaport Security Standards Advisory Council as provided in paragraph (b).

(b) The Office of Drug Control shall convene a Seaport Security Standards Advisory Council as defined in s. 20.03(7) to review the statewide minimum standards for seaport security for applicability to and effectiveness in combating current narcotics and terrorism threats to Florida's seaports. All sources of information allowed by law shall be utilized in assessing the applicability and effectiveness of the standards.

(c) The members of the council shall consist of the following:

1. Two seaport directors appointed by the Governor.

2. Two seaport security directors appointed by the Governor.

3. One designee from the Department of Law Enforcement.

4. The director of the Office of Motor Carrier Compliance of the Department of Transportation.

5. One designee from the Attorney General's Office.

6. One designee from the Department of Agriculture and Consumer Services.

7. One designee from the Office of Tourism, Trade, and Economic Development.

8. A representative of the United States Coast Guard who shall serve as an ex officio member of the council.

(d) Members of the council shall serve for terms of 4 years. A vacancy shall be filled by the original appointing authority for the balance of the unexpired term.

(e) Seaport Security Standards Advisory Council members shall serve without pay; however, state per diem and travel allowances may be claimed for attendance of officially called meetings as provided by s. 112.061.

(f) The Seaport Security Standards Advisory Council shall be chaired by a designee from the Office of Drug Control. The council shall meet upon the call of the chair and at least once every 5 years.

(g) Recommendations and findings of the council shall be transmitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate.

Section 3. Section 311.121, Florida Statutes, is created to read:

311.121 Qualifications, training, and certification of licensed security officers at Florida seaports.--

(1) It is the intent of the Legislature that seaports in the state be able to mitigate operational security costs without reducing security levels by employing a combination of certified law enforcement officers and certified private security service officers. In order to accomplish this intent, seaports shall have the option to recruit and employ seaport security officers who are trained and certified pursuant to the provisions of this section. The Department of Law Enforcement shall adhere to this

intent in the approval and certification process for seaport security required under s. 311.12.

(2) The authority or governing board of each seaport identified under s. 311.09 that is subject to the statewide minimum seaport security standards established in s. 311.12 shall require that a candidate for certification as a seaport security officer:

(a) Has received a Class D license as a security officer under chapter 493.

(b) Has successfully completed the certified training curriculum for a Class D license or has been determined by the Department of Agriculture and Consumer Services to have equivalent experience as established by rule of the department.

(c) Has completed the training or training equivalency and testing process established by this section for becoming a certified seaport security officer.

(3)(a) The Seaport Security Officer Qualification, Training, and Standards Coordinating Council is created under the Department of Law Enforcement.

(b) The executive director of the Department of Law Enforcement shall appoint 12 members to the council which shall include:

1. The seaport administrator of the Department of Law Enforcement.

2. The chancellor of the Community College System.

3. The director of the Division of Licensing of the Department of Agriculture and Consumer Services.

4. The administrator of the Florida Seaport Transportation and Economic Development Council.

5. Two seaport security directors from seaports designated under s. 311.09.

6. One director of a state law enforcement academy.

7. One representative of a local law enforcement agency.

8. Two representatives of contract security services.

9. One representative of the Division of Driver Licenses of the Department of Highway Safety and Motor Vehicles.

10. One representative of the United States Coast Guard who shall serve as an ex officio member of the council.

(c) Council members designated in subparagraphs (b)1.-4. shall serve for the duration of their employment or appointment. Council members designated under subparagraphs (b)5.-10. shall serve 4-year terms, except that the initial appointment for the representative of a local law enforcement agency, one representative of a contract security agency, and one seaport security director from a seaport designated in s. 311.09 shall serve for terms of 2 years.

(d) The chancellor of the Community College System shall serve as chair of the council.

(e) The council shall meet upon the call of the chair, and at least once a year to update or modify curriculum recommendations.

(f) Council members shall serve without pay; however, state per diem and travel allowances may be claimed for attendance of officially called meetings as provided by s. 112.061.

(g) By December 1, 2006, the council shall identify the qualifications, training, and standards for seaport security officer certification and recommend a curriculum for the seaport security officer training program that shall include no less than 218 hours of initial certification training and that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties.

(h) The council may recommend training equivalencies that may be substituted for portions of the required training.

(i) The council shall recommend a continuing education curriculum of no less than 8 hours of additional training for each annual licensing period.

(4)(a) The Department of Education shall develop the curriculum recommendations and classroom-hour specifications of the Seaport Security Officer Qualifications, Training, and Standards Coordinating Council into initial and continuing education and training programs for seaport security officer certification.

(b) Such training programs shall be used by schools licensed under s. 493.6304, and each instructor providing training must hold a Class D license pursuant to s. 493.6301.

(c) A seaport authority or other organization involved in seaport-related activities may apply to become a school licensed under s. 493.6304.

(d) The training programs shall include proficiency examinations that must be passed by each candidate for

certification who successfully completes the required hours of training or provides proof of authorized training equivalencies.

(e) A candidate for certification must be provided with a list of authorized training equivalencies in advance of training; however, each candidate for certification must successfully complete 20 hours of study specific to Florida Maritime Security and pass the related portion of the proficiency examination.

(5) Seaport security officer certificates shall be provided by the Department of Agriculture and Consumer Services for issuance by a school licensed under s. 493.6304 and such school may issue the certificate to an applicant who has successfully completed the training program. A school shall notify the Division of Licensing within the department upon the issuance of each certificate. The notification must include the name and Class D license number of the certificateholder and a copy of the certificate. The department shall place the notification with the licensee's file. Notification may be provided by electronic or paper format pursuant to instruction of the Department of Agriculture and Consumer Services.

(6)(a) Upon completion of the certification process, a person holding a Class D license must apply for a revised license pursuant to s. 493.6107(2), which license shall state that the licensee is certified as a seaport security officer.

(b) A person who has been issued a seaport security officer certificate is authorized to perform duties specifically required of a seaport security officer.

(c) The certificate is valid for the duration of the seaport security officer's Class D license and shall be renewed upon renewal of the license.

(d) The certificate shall become void if the seaport security officer's Class D license is revoked or allowed to lapse for more than 1 year or if the licensee fails to complete the annual continuing education requirement prior to expiration of the Class D license.

(e) Renewal of certification following licensure revocation or a lapse of longer than 1 year requires, at a minimum, 20 hours of recertification training and reexamination of the applicant.

Section 4. Section 311.122, Florida Statutes, is created to read:

311.122 Seaport law enforcement agency; authorization; requirements; powers; training.--

(1) Each seaport in the state is authorized to create a seaport law enforcement agency for its facility, which authority in no way precludes the seaport from contracting with local governments or law enforcement agencies to comply with the security standards required by this chapter.

(2) Each seaport law enforcement agency shall meet all of the standards set by the state under certified law enforcement guidelines and requirements and shall be certified as provided under chapter 943.

(3) If a seaport creates a seaport law enforcement agency for its facility, a minimum of 30 percent of the aggregate personnel of each seaport law enforcement agency shall be sworn

state-certified law enforcement officers with additional Maritime Transportation Security Act seaport training; a minimum of 30 percent of on-duty personnel of each seaport law enforcement agency shall be sworn state-certified law enforcement officers with additional Maritime Transportation Security Act seaport training; and at least one on-duty supervisor must be a sworn state-certified law enforcement officer with additional Maritime Transportation Security Act seaport training.

(4) For the purposes of this chapter, where applicable, seaport law enforcement agency officers shall have the same powers as university police officers as provided in s. 1012.97; however, such powers do not extend beyond the property of the seaport except in connection with an investigation initiated on seaport property or in connection with an immediate, imminent threat to the seaport.

(5) For the purposes of this chapter, sworn state-certified seaport security officers shall have the same law enforcement powers with respect to the enforcement of traffic laws on seaport property as university police officers under s. 1012.97, community college police officers under s. 1012.88, and airport police officers under the provisions of s. 316.640(1)(a)1.d.(I)-(II).

(6) Certified seaport security officers shall have the authority to immediately tow any vehicle parked illegally as indicated by an existing sign or during an emergency as deemed necessary to maintain seaport security.

Section 5. Section 311.123, Florida Statutes, is created to read:

311.123 Maritime domain security awareness training program.--

(1) The Florida Seaport Transportation and Economic Development Council, in conjunction with the Department of Law Enforcement and the Office of Drug Control within the Executive Office of the Governor, shall create a maritime domain security awareness training program to instruct all personnel employed within a seaport's boundaries about the security procedures required of them for implementation of the seaport security plan.

(2) The training program curriculum must include security training required pursuant to 33 C.F.R. part 105 and must be designed to enable the seaports in this state to meet the training, drill, and exercise requirements of 33 C.F.R. part 105 and individual seaport security plans and to comply with the requirements of s. 311.12 relating to security awareness.

Section 6. Section 311.124, Florida Statutes, is created to read:

311.124 Trespassing; detention by a certified seaport security officer.--

(1) Any Class D or Class G seaport security officer certified under the Maritime Transportation Security Act guidelines and s. 311.121 or any employee of the seaport security force certified under the Maritime Transportation Security Act guidelines and s. 311.121 who has probable cause to believe that a person is trespassing pursuant to the provisions

of s. 810.08 or s. 810.09 or this chapter in a designated restricted area pursuant to s. 311.111 is authorized to detain such person in a reasonable manner for a reasonable period of time pending the arrival of a law enforcement officer, and such action shall not render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(2) Upon detaining a person for trespass, the seaport security officer shall immediately call a certified law enforcement officer to the scene.

Section 7. Section 817.021, Florida Statutes, is created to read:

817.021 False information to obtain a seaport security identification card.--A person who willfully and knowingly provides false information in obtaining or attempting to obtain a seaport security identification card commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7209 PCB GO 06-14 OGSR Total Maximum Daily Loads
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Williamson	Williamson
1) Agriculture Committee	7 Y, 0 N	Kaiser	Reese
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Watershed Restoration Act and Total Maximum Daily Loads

The federal Water Pollution Control Act of 1972, commonly referred to as the Clean Water Act (CWA), established the basic framework for pollution control in the nation's water bodies. Its primary goal was to have the nation's water bodies clean and useful. By setting national standards and regulations for the discharge of pollution, the intent of the CWA was to restore and protect the health of the nation's water bodies.[1]

Section 305(b) of the CWA requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. A partial list of water bodies that qualify as "impaired" (i.e., do not meet specific pollutant limits for their designated uses) must be submitted to the U.S. Environmental Protection Agency under section 303(d) of the CWA. States are required to develop total maximum daily loads (TMDL) for each pollutant that exceeds the legal limits for that water body. Section 303(d) and the development of TMDLs generally were ignored by the states until environmental groups began filing lawsuits.[2]

In 1999, the Florida Legislature passed the Florida Watershed Restoration Act (WRA), which codified the establishment of TMDLs for pollutants of water bodies.[3] The WRA requires the Department of Environmental Protection (DEP) to promulgate rules relating to the methodology for assessing, calculating, allocating, and implementing the TMDL process.[4] The WRA also directs that the TMDL process be integrated with existing protection and restoration programs, and coordinated with all state agencies and affected parties.[5]

TMDLs describe the amount of each pollutant a water body can receive without violating state water quality standards.[6] TMDLs are the sum of waste load allocations, load allocations, and a margin of safety to account for uncertain conditions. Waste load allocations are pollutant loads attributable to existing and future point sources, such as discharges from industry and sewage facilities. Load allocations are pollutant loads attributable to existing and future nonpoint sources such as the runoff from farms, forests, and urban areas. Even though an individual discharge into a water body may meet established standards, the cumulative and multiplier effect of discharges from numerous sources can cause a water body not to meet the quality standards.[7]

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[1] *See House of Representatives Staff Analysis HB 1839 CS* by the State Resources Council, April 25, 2005, at 2.
[2] *Id.*
[3] Chapter 99-223, Laws of Florida; s. 403.067, F.S.
[4] Section 403.067(3)(b), F.S.
[5] Subsections (1) and (3) of section 403.067, F.S.
[6] Section 403.067(6)(a), F.S.
[7] *See House of Representatives Staff Analysis HB 1839 CS* by the State Resources Council, April 25, 2005, at 2.

DEP may develop a basin management action plan (BMAP) as part of the development and implementation of a TMDL for a water body.[8] The plan must:

- Integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL;
- Restore designated uses of the water body;
- Provide for phased implementation of strategies;
- Establish a schedule for implementing strategies;
- Establish a basis for evaluating the plan's effectiveness;
- Identify feasible funding strategies; and
- Equitably allocate pollutant reductions to basins as a whole or to each point or nonpoint source.[9]

The BMAP also must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is achieved over time.[10] Progress assessments are required every five years and revisions to the plan are required, as appropriate.[11]

Public Records Exemption

Current law provides a public records exemption for certain agricultural records. Individual agricultural records relating to processes or methods of production, or relating to costs of production, profits, or other financial information that are reported to the Department of Agriculture and Consumer Services as part of best management practices for reducing water pollution are confidential and exempt[12] from public records requirements.[13] Upon request, the department may release the confidential and exempt records to DEP or any water management district.

Pursuant to the Open Government Sunset Review Act,[14] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes.

The bill maintains the provision requiring DEP or any water management district with authorized access to such records to maintain the confidential and exempt status of those records. In *Ragsdale v. State*,[15] the Supreme Court held that

> [T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the

[8] Section 403.067(7)(a)1., F.S.
[9] *Id.*
[10] Section 403.067(7)(a)5., F.S.
[11] *Id.*
[12] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[13] Section 403.067(7)(c)5., F.S.
[14] Section 119.15, F.S.
[15] 720 So.2d 203 (Fla. 1998).

policy behind the exemption and not on the simple fact that the information has changed agency hands.[16]

In *City of Riviera Beach v. Barfield*,[17] the court stated "[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute."[18] As such, the provision is *unnecessary*, because had the Legislature intended for the confidential and exempt status to evaporate then the Legislature would have stated as much.

C. SECTION DIRECTORY:

Section 1 amends s. 403.067(7), F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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[16] *Id.* at 206, 207.

[17] 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined "once a record is transferred from one public agency to another, the record loses its exempt status." The court declined to accept the Attorney General's view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.

[18] *Id.* at 1137.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Governmental Operations Committee reported PCB GO 06-14 favorably with one amendment. The amendment reinserts the provision requiring the Department of Environmental Protection or any water management district with authorized access to confidential and exempt records to maintain the confidential and exempt status of those records.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act regarding the total maximum daily load program for state waters; amending s. 403.067, F.S., which provides an exemption from public records requirements for agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to interim measures, best management practices, and other measures used to achieve levels of pollution reduction established by the department; making editorial changes; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.--

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

(c) Best management practices.--

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the

level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts pursuant to ss. 120.536(1) and 120.54, and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules shall also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including recordkeeping requirements.

3. Where interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection shall be verified at representative sites by the department. The department shall use best professional judgment in making the initial verification that the best management practices are effective and, where applicable, shall notify the appropriate water management district and the Department of Agriculture and Consumer Services of its initial verification prior to the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from the provisions of s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants.

4. Where water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures according to rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a

reevaluation of the best management practice or other measure. Should the reevaluation determine that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. ~~Individual~~ Agricultural records relating to processes or methods of production, ~~or relating to~~ costs of production, profits, or other financial information held by ~~which are otherwise not public records, which are reported to~~ the Department of Agriculture and Consumer Services pursuant to subparagraphs 3. and 4. or pursuant to any rule adopted pursuant to subparagraph 2. are ~~shall be~~ confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to ~~of~~ the department or any water management district, ~~the Department of Agriculture and Consumer Services shall make such individual agricultural records available to that agency,~~ provided that the confidentiality specified by this subparagraph for such records is maintained. ~~This subparagraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

6. The provisions of subparagraphs 1. and 2. shall not preclude the department or water management district from requiring compliance with water quality standards or with

current best management practice requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

Section 2. This act shall take effect October 1, 2006.